








Bequeathed to  
**The Library**  
of the  
**University of Toronto**  
by  
the late  
**Hon. Mr. Justice Armour**  
for many years  
a Member of the Board of  
Governors of the University









Digitized by the Internet Archive  
in 2007 with funding from  
Microsoft Corporation



BUTTERWORTHS'  
YEARLY DIGEST  
OF  
REPORTED CASES  
FOR THE YEAR 1908,  
BEING  
THE FIRST ANNUAL SUPPLEMENT  
OF  
BUTTERWORTHS' TEN YEARS'  
DIGEST.





*[Butterworths' ten years digest]*

( BUTTERWORTHS' )  
**YEARLY DIGEST**  
 OF  
**REPORTED CASES**  
 FOR THE YEAR 1908  
 BEING  
*THE FIRST ANNUAL SUPPLEMENT,*  
 OF  
**BUTTERWORTHS' TEN YEARS'**  
**DIGEST**

AND CONTAINING THE CASES  
 DECIDED IN THE SUPREME AND OTHER COURTS,  
 INCLUDING  
*A COPIOUS SELECTION OF REPORTED CASES DECIDED IN*  
*THE IRISH AND SCOTCH COURTS,*  
 WITH  
 LISTS OF CASES DIGESTED, OVERRULED, CONSIDERED, &c.,  
 AND OF STATUTES, ORDERS, RULES, &c., REFERRED TO.

*Gerard Robert*  
 EDITED BY  
**G. R. HILL, M.A.,**

LATE EXHIBITIONER OF BALLIOL COLLEGE, OXFORD; OF THE INNER TEMPLE AND  
 NORTH-EASTERN CIRCUIT, BARRISTER-AT-LAW,

ASSISTED BY  
**HARRY CLOVER,**  
 OF THE INNER TEMPLE, BARRISTER-AT-LAW.

LONDON :  
**BUTTERWORTH & CO., 11 & 12, BELL YARD, TEMPLE BAR.**  
**Law Publishers.**

1909.

*311172 35*  
*7 2*

BRADBURY, AGNEW, & CO. LD., PRINTERS,  
LONDON AND TONBRIDGE.



## PUBLISHERS' ANNOUNCEMENT.

---

THIS Volume, which forms the First Annual Supplement to BUTTERWORTHS' TEN YEARS' DIGEST, is arranged on the same system of classification as was adopted in that Work. The skeleton of subject headings which appeared in the larger work has not been altered in any particular. The cases for the year 1908 have been fitted in the same scheme of titles and subtitles; and those instances have been clearly indicated where no cases have been decided relating to certain titles or subtitles. The elaborate and time-saving system of cross-references which appeared for the first time in the Work mentioned above has been employed in the present Volume. The Case Law for the year 1908 is fully covered therein, and the Volume has been in every way designed to form a Supplement which can be used expeditiously and satisfactorily in conjunction with the TEN YEARS' DIGEST.

The Cases reported in all the following series of Reports have been digested and incorporated in the present Volume.

Law Reports.	Registration Cases.
Law Journal Reports.	Cox's Criminal Law Cases.
Justice of the Peace.	Local Government Reports.
Law Times Reports.	O'Malley and Harcastle's Election Petition Reports.
Times Law Reports.	M'Namara's Railway and Canal Cases.
Solicitors' Journal.	Irish Reports.
Commercial Cases.	Scotch Reports.
Maritime Law Cases.	Court of Session Cases.
Bankruptcy and Company Cases.	Scottish Law Reporter.
Patent, Design, Trade Mark and other Cases.	

In addition to including the cases appearing in the above Reports, a large number of important cases have been included which are only reported in the following newspapers and legal journals: *The Times*, *Law Times*, *Solicitors' Journal*, *Justice of the Peace*, and *Weekly Notes*.



# LIST OF REPORTS

CONTAINING THE CASES COMPRISED IN THIS DIGEST, WITH THE  
MODE OF CITATION.

Reports.						Mode of Citation.
Law Reports	...	...	...	...	...	[1908] 1 Ch. ; [1908] 2 Ch. [1908] 1 K. B. ; [1908] 2 K. B. [1908] P. [1908] A. C.
Law Journal Reports	...	...	...	...	...	77 L. J. Ch. 77 L. J. K. B. 77 L. J. P. 77 L. J. P. C.
Justice of the Peace	...	...	...	...	...	72 J. P.
Law Times Reports	...	...	...	...	...	97 L. T. ; 98 L. T. ; 99 L. T.
Times Law Reports...	...	...	...	...	...	24 T. L. R. ; 25 T. L. R.
Solicitors' Journal	...	...	...	...	...	52 Sol. Jo. ; 53 Sol. Jo.
Commercial Cases	...	...	...	...	...	13 Com. Cas.
Maritime Law Cases	...	...	...	...	...	12 Asp. M. C.
Bankruptcy and Company Cases	...	...	...	...	...	15 Manson.
Patent, Design, Trade Mark and other Cases *	...	...	...	...	...	25 R. P. C.
Registration Cases	...	...	...	...	...	2 Smith, Reg.
Cox's Criminal Law Cases...	...	...	...	...	...	21 Cox, C. C.
Local Government Reports	...	...	...	...	...	6 L. G. R.
O'Malley and Hardcastle's Election Petition Reports	...	...	...	...	...	O'M. & H.
M'Namara's Railway and Canal Cases	...	...	...	...	...	12 Rly. Cas.
<i>Irish Reports</i>	...	...	...	...	...	[1908] 1 I. R. [1908] 2 I. R.
<i>Scotch Reports</i> —						
Court of Session Cases	...	...	...	...	...	[1908] S. C.
Scottish Law Reporter	...	...	...	...	...	45 Sc. L. R.

\* A selection only of these cases is included.





# ALPHABETICAL LIST OF CASES DIGESTED.

NAMES OF BOTH PLAINTIFFS AND DEFENDANTS APPEAR ALPHABETICALLY.

[*N.B.*—Cases which were digested in the *Yearly Digest* for 1907 and have since appeared in other reports are denoted in this *Index* by the year (1907) with a reference to the column of the *Yearly Digest* for that year and to the additional reports. Such cases are not, as a rule, digested again in this *Volume*.]

## A.

- A. B., C. D. *v.*, 283  
 Abbot, Bristol United Breweries, *Ld.*, *v.*, 72  
 Abdool Carrim Peer Mamode, Ibrahim Esmael *v.*, 178  
 Aberdeen Master Masons' Incorporation *v.* Smith, 245  
     — Steam Trawling and Fishing Co., *Ld.*,  
         Clan Steam Trawling Co., *Ld.*, *v.*, 602  
     — Steam Trawling and Fishing Co., *Ld.*,  
         Gill *v.*, 399  
 Aboo Bakar Mamode Taher, Ibrahim Esmael *v.*,  
     178  
 Abrahams, *In re*; Abrahams *v.* Abrahams, 223  
 Acton Urban District Council, Hunt *v.*, 357  
     — Urban District Council *v.* London United  
         Tramways, *Ld.*, 647  
 Adair *v.* New River Co. and Metropolitan Water  
     Board, 525  
 Adam *v.* Bank of England, 26, 481  
     — *v.* Old Bushmills Distillery Co., 78  
 Adams *v.* Crane; *In re* Crane, 698  
     — *v.* Marylebone Borough Council, 413  
     — Wills *v.*, 336  
 Adamson, Johnson *v.*; *In re* Fieldwick, 279  
 Addenbrooke's Hospital, Kutner *v.*, 220  
 Addison *v.* Shepherd, 188  
 Adelaide Licensing Justices, Kearn *v.*, 170  
     — Licensing Justices, McGrath *v.*, 170  
 Adjustable Cover and Boiler Block Co., *Ld.*,  
     Poulton *v.*, 328, 455  
 Adkins, *Re*; Solomon *v.* Catchpole, 684  
 Administrator-General of Bengal, Debendra Nath  
     Dutt *v.*, 219  
 Admiralty, Lords Commissioners of, The China  
     Navigation Co., *Ld.* *v.*; "The Chin-  
     kiang," 590  
     — The, *v.* Mills, 24  
 Advocate, Lord, *v.* Caledonian Ry. Co., 535  
 Aërated Bread Co., *In re*; and *In re* Albert  
     Baker & Co., 640  
 Agincourt Steamship Co. *v.* Eastern Extension,  
     Australasia and China Telegraph Co.  
     and Great Northern Telegraph Co., 629  
 Aitken, Campbell & Co. *v.* Boullen and Gatenby,  
     544  
 Aktiesselskabet Hekla *v.* Bryson, Jameson & Co.,  
     588  
 Aldritt *v.* Maconchy, 424  
 Alexander & Co., *Ld.* *v.* Valentine and Sons, *Ld.*,  
     473  
     — Marmor, *Ld.* *v.*, 77  
 Alford, Falls *v.*; *In re* Black, 693  
 Alianza Insurance Co. of Santander, The, Mari-  
     time Insurance Co., *Ld.*, The, *v.*, 313  
 Allan Bros. & Co., Robertson *v.*, 389  
 Allatini Bros., Red "R" Steamship Co. *v.*, 581  
 Allen Bros. & Co., Tasker & Co. *v.* "The Hiber-  
     nian," 587  
 Alliance Credit Bank of London *v.* Owen, 166  
 Allison *v.* Clayhills, 610  
     — Gray *v.*, 634  
 Allworthy and Walker *v.* Clayton, 458  
 Alton, Wilkinson *v.*, 240  
 Amalgamated Society of Railway Servants,  
     Osborne *v.*, 636  
     — Society of Railway Servants and Bell,  
         Bussy *v.*, 634  
 Amherst, Baron, of Hackney and Others, Foun-  
     taine *v.*; *In re* Fountaine, *In re*  
     Dowler, 655  
 Amphthill Union Assessment Committee, London  
     and North Western Ry. Co. *v.*, 519  
 Anderson *v.* Atkinson, 421  
     — *v.* Marten, 318  
     — *v.* Calvert, 345  
     — *v.* Wandsworth Borough Council, 52  
 Anderton, Wright *v.*, 303  
 Andrew *v.* Bridgman, 341  
 Andrews, Leng, Sir W. C., & Co. (Sheffield Tele-  
     graph) *v.*, 633  
     — *v.* Andrews and Mears, 386

- Anglo-Algerian Steamship Co. (1896) *v.* Houlder Line, *Ld.*, 160
- Anglo-American Oil Co., *Ld.* *v.* Manning, 672
- "Anselm, The," 592
- Anstey *v.* The British Natural Premium Life Association, *Ld.*, 311
- Anslow *v.* Cannock Chase Colliery Co., *Ld.*, 383
- Anstis' and McLean's Claims, *In re* National Motor Mail Coach Co., *Ld.*, 88
- Anthony *v.* Midland Ry. Co., 441
- Apothecaries' Society *v.* Gregory, 406
- Appleyard, New London and Suburban Omnibus Co. *v.*; *In re* The Co., 72
- "Aristocrat, The," 597
- Armitage *v.* Parsons, 328
- Armstrong *v.* Gamble; *In re* Turner, 696
- Arnold and Butler *v.* Bottomley and Odhams, *Ld.*, 184
- Whitbread *v.*, 391
- Ashby, Attorney-General *v.*, 563
- Ashworth, *Ex parte*; *In re* Holmes, 37, 333
- Assheton Smith *v.* Owen, 606
- Assicurazioni Generali de Trieste *v.* Empress Assurance Corporation, *Ld.*, 316
- Athenaeum Newsroom and Library, Liverpool, Proprietors of the, Foster *v.*, 301
- Atkins, *In re*; Smith *v.* Atkins, 476
- R. *v.*, 151
- Atkinson, Anderson *v.*, 421
- Burton *v.*, 15
- General Billposting Co., *Ld.* *v.*, 404, 633
- *In re*; Proctor *v.* Atkinson, 434
- *v.* Surrey Vaudeville Theatre, 401
- Attenborough and Son, Oppenheimer *v.*, 10
- Attorney-General *v.* Ashby, 563
- *v.* Birmingham, etc., Drainage Board, 41, 488
- *v.* Birmingham, Tame and Rea Drainage Board, 662
- *v.* Brighton Corporation, 500
- *v.* Fargrove Steam Navigation Co., 573
- *v.* Felixstowe Gas Light Co., 535
- *v.* Frimley and Farnborough District Water Co., 667
- *v.* Great Northern Ry. Co., 508
- Great Northern, Piccadilly and Brompton Ry. Co. *v.* 536
- *v.* Johnson, 164
- *v.* Jefferys; *In re* Glukman, 218
- *v.* London and India Docks Co., 536
- *v.* Metcalf and Greig, 413
- *v.* Plymouth Corporation, 359
- *v.* Price, 200
- *v.* Richmond (Duke of) (No. 1), 164
- *v.* Richmond (Duke of) (No. 2), 526
- *v.* Ross, 538
- Attorney-General, Bishop of Wakefield *v.*; *In re* Whitehead, 58
- *v.* Yorkshire (Woollen District) Electric Tramways, *Ld.*, 533
- and Croydon Rural District Council *v.* Moorsom-Roberts, 260
- and Rhondda Urban District Council *v.* Pontypridd Waterworks Co., 475
- for Ireland *v.* Vandeleur, 663
- for Natal, Tilonko *v.*, 485, 540
- for Natal, Tshingumuzi *v.*, 483
- for New South Wales *v.* The Curator of Intestate Estates, 169
- for New Zealand, Badger *v.*, 484
- for Ontario, Woodruff *v.*, 175
- for Quebec, Cabot *v.*, 177
- of the Duchy of Lancaster *v.* Fleetwood Urban District Council, 359
- Attree, *In re*; *Ex parte* Ward, 37
- Auchmuty, *In re*, 365
- Audley, R. *v.*, 136
- Audsley, Dick *v.*, 62
- Auerbach, Crozier, Stephens & Co. *v.*, 473
- Austin and Others, R. *v.*, 203
- London Music Hall, *Ld.* *v.*, 109
- Australian Mutual Provident Society, The, Campbell *v.*, 78
- B.
- Badger *v.* Attorney-General for New Zealand, 484
- Badham, Cooper-Dean *v.*, 461
- Bailey, Browne *v.*, 246
- *v.* Kenworthy, *Ld.*, 383
- Baines and Another, R. *v.*, 130
- Baird, Burley *v.*, 389
- & Co., *Ld.*, Donnelly *v.*, 394
- & Co., *Ld.*, Lee *v.*, 384
- Dempster *v.*, 384
- Bake *v.* French (No. 2), 612
- Baker *v.* Baker and Another, 285
- Albert & Co., *Ld.*, *In re*; and *In re* Aërated Bread Co., *Ld.*, 640
- English Crown Spelter Co., *Ld.* *v.*, 298
- *v.* Faber, 487
- Goodson *v.*, 249
- Mapey *v.*, 346
- R. *v.*, 146
- *Re*, 610
- *v.* Snell, 15
- Baker's Trusts, *In re*; Hunt *v.* Baker, 468
- Balcombe *v.* Balcombe, 283
- Baldwin *v.* Pescott; *In re* Jacobs, 97
- Balm Hill, and Sons, Clark *v.*, 45
- "Banana" Steamship, Owners of, McDonald *v.*, 388
- Banister *v.* Thompson, 196, 276



- Banbury Union Assessment Committee, Great Central Ry. Co. *v.*, 518  
 Bank of Bombay *v.* Suleman Somji, 121, 222, 431, 697  
   — of England, Adam *v.*, 26, 481  
   — *v.* Cutler, 28, 89  
 Bankrupt, The, *Ex parte*; *In re* Walmsley, 32  
 Banks, Cardiff Union *v.*, 464  
 Bannister, Finch *v.*, 565  
 Barclay & Co., Ltd. *v.* Poole, 571  
   — *v.* Innes; *In re* Innes, 687  
   — Curle & Co., Ltd., Sir James Laing & Co., Ltd. *v.*, 544  
 Bargewell *v.* Daniel, 396  
 Barker *v.* Illingworth, 436  
 Barmack, Ltd., Dickinson *v.*, 388  
 Barnard *v.* Roberts, 231  
 Barne *v.* Erskine; *In re* Boucherett, 654  
 Barnes *v.* Brown, 407  
 Barnett, *In re*; Waring *v.* Painter Stainers' Co., 60  
   — *In re*; Dawes *v.* Ixer, 467  
   — King *v.*, 427  
 Baron *v.* Baron, 282  
 Barraclough *v.* Cooper, 691  
 Bartholomew, R. *v.*, 266  
 Barton, Starkey *v.*, 548, 617  
 Bartram, Rickards *v.*, 634  
 Bastable *v.* Little, 624  
 Batchelor, Wilson *v.*; *In re* Wilson, 691  
 Bateman, Palmer *v.*, 443  
 Bath County Court Judge, R. *v.*, 265, 322  
 Batho, *Re*; Batho *v.* Cross, 220, 676  
 Batistoni *v.* Dance, 23  
 Battersea Borough Council, Evans *v.*, 514  
 Baumgart, Morley *v.*, 406  
 Baxter, Board of Trade *v.* ("The Scarsdale"), 573  
   — Commissioners of Taxation for New South Wales *v.* (Att.-Gen. for Commonwealth of Australia intervening), 484  
 Baxter's Leather Co. *v.* The Royal Mail Steam Packet Co., 585  
 Bayley, R. *v.*, 135  
 Bayley-Worthington, Cohen *v.*, 526  
 Bayliss, Caroe *v.*, 572  
 Bayne, Blake *v.*, 168, 218, 219  
 Baynes, Douglas *v.*, 172  
 Beamish *v.* Whitney, 351  
 Beard, *In re*; Reversionary and General Securities Co. *v.* Hall; Beard *v.* Hall, 694  
 Beatty, McConnell *v.*, 176  
 Beckenham Urban District Council, Bloor *v.*, 270  
 Beckett *v.* Grimthorpe; *In re* Lord Grimthorpe, 163  
 Begg, Hill *v.*, 397  
 Beira Ry. Co., Mashonaland Ry. Co., Ltd. *v.*, 113  
 Beirnsstein, Brooks *v.*, 23  
 Belfast Corporation, Gawley *v.*, 497  
 Belfast Guardians, R. *v.*, 463  
   — Harbour Commissioners, Larkin *v.*, 635  
 Belguard *v.* Green, Holland & Co., 109  
 Bell, *In re*; *Ex parte* the Debtor, 38  
   — *In re*, 219  
   — *v.* Bridlington Corporation, 51  
   — *v.* Graham, 203  
   — Pettitt *v.*, 104, 491  
   — and Amalgamated Society of Railway Servants, Bussy *v.*, 634  
 Bellamy *v.* Great Western and Metropolitan Dairies, Ltd., 671  
 "Bellanoch, The," 593  
 Belli *v.* Lane; *In re* Lane, 467  
 Bellingham & Co. *v.* Hurley, 255  
 Benjamin and Another, Martin *v.*, 252  
 Bennett, R. *v.*, 368  
   — Clinton *v.*, 123  
 Bennetts & Co. *v.* J. and A. Brown, 579  
 Benson *v.* Metropolitan Asylums Board, 387  
   — R. *v.*, 130  
 Beresford *v.* Clarke, 548  
 Bergel and Joseph, *In re*; Pears *v.* Bergel, 32  
 Berkhamsted Grammar School, *In re*, 201  
 Bermondsey Borough Council, R. *v.*, 158  
   — R. *v.*; *Ex parte* Bermondsey Guardians, 465  
 Bessler, Waechter & Co., London Transport Co. *v.*, 580  
 Betton's Charity, *In re*, 59  
 Bevan, Burton *v.*, 87  
 Bicknell *v.* Bicknell, 215  
 Biddle *v.* Hart, 401  
 Biggar, Robson *v.*, 187, 483  
 Bilham, Boyd, Ltd. *v.*, 188  
 Bingley *v.* Quest, 14  
 Binley, Mattinson *v.*, 239  
 Birch, Rabey *v.*, 215, 478  
   — *v.* Birch, 290  
 Birkett *v.* Birkett, 277  
 Birmingham Corporation, Inglis *v.* Feeney, *In re*, 685  
   — etc., Drainage Board, Att.-Gen. *v.*, 41, 488  
   — Tame and Rea Drainage Board, Att.-Gen. *v.*, 662  
 "Birnham, The," 602  
 Birstall Candle Co. *v.* Daniels (Saunders, Claimant), 124  
 Bisgood *v.* Henderson's Transvaal Estates, Ltd. 83  
 Bishop and Wife, Howes *v.*, 213  
 Black, *In re*; Falls *v.* Alford, 693  
   — *v.* Scottish Temperance Life Assurance Co., 194  
 Blackburn Union, Local Government Board for Ireland *v.*, 466  
 Blackledge, James and Sons, Ltd., *v.* Bolshaw, 238  
 Blair *v.* Buckworth, 427

- Blair *v.* Clark (Graydon, Garnishee), 480  
 Blake *v.* Bayne, 168, 218, 219  
 Blakiston *v.* Cooper, 295  
     — New Druce-Portland Co. *v.*, 68  
 "Blanche, The," 7  
 Blindell, Talbot *v.*, 339  
 Bloor *v.* Beckenham Urban District Council, 270  
 Bluett *v.* Stutchbury's, Ltd., 78  
 Blyth *v.* Hulton & Co., Ltd., 251  
 Board of Trade *v.* Baxter ("The Scarsdale"), 573  
 "Bodlewel, The," 600  
 Boger *v.* Boger, 286  
 Bognor Water Co., Frederick *v.*, 670  
 Bolshaw, James Blackledge and Sons *v.*, 238  
 Bolton, *Ex parte*; *In re* Taylor, 38  
     — Gough *v.*, 326  
 Bond, R. *v.*, 129  
     — *v.* Wilson and Sons, 403  
 Bonnell *v.* Preston, 474  
 Booth, Burgess *v.*, 301  
 Boorer *v.* Boorer; *In re* Boorer, 682  
 Borwick *v.* Southwark Corporation, 520  
 Bottomley *v.* Brougham, 346  
     — and Odhams, Ltd., Arnold and Butler *v.*, 184  
 Boucherett, *Re*; Barne *v.* Erskine, 654  
 Boulten and Gatenby, Aitken, Campbell & Co. *v.*, 544  
 Boulter, R. *v.*, 134  
 Bourne, Minty *v.*; *In re* Davidson, 60  
     — and Hollingsworth *v.* Marylebone Borough Council, 356  
 Bowden *v.* New Mills Urban District Council, 464  
 Bowen *v.* Bowen, 293  
 Bowerman, *In re*; Porter *v.* Bowerman, 162  
 Bowring & Co., Ltd., Rosengvist *v.*, 382  
 Boyd, Ltd. *v.* Bilham, 188  
 Bradford, R. *v.*, 158, 261  
 Bradford-on-Avon Rural District Council, R. *v.*, 362  
 Bradshaw *v.* Bradshaw, 693  
 Brammall, Chaplin & Co., Ltd. *v.*, 114, 212  
 Bray *v.* Smith, 80  
 Bridgman, Andrew *v.*, 341  
 Brennan, McConnell *v.*, 251  
 "Brenner, The," 8  
 Brentford Gas Co. *v.* Chiswick Urban District Council, 253  
 Brewster, *In re*; Butler *v.* Southam, 163  
 Bridgwater Corporation *v.* Stone, 268  
 Bridlington Corporation, Bell *v.*, 51  
 Brighton Corporation, Att.-Gen. *v.*, 500  
     — Corporation, Heath *v.*, 445  
     — Corporation *v.* Packham, 664  
 Briggs, R. *v.*, 134  
 Bristol Tramways Company, West *v.*, 648  
     — United Breweries, Ltd. *v.* Abbot, 72  
 Bristol, West of England and South Wales Operatives' Trade and Provident Society, Gozney *v.*, 637  
 Britannic Assurance Co., Comerford *v.*, 309  
 British Building Stone Co., Ltd., *In re*, 85  
     — Cash and Parcel Conveyors, Ltd. *v.* Lamson Store Service Co., Ltd., 4  
     — Columbia, Att.-Gen. for, and Mary Watts, Rubin Watts *v.*, 174  
     — Electromobile Co., Electromobile Co. *v.*, 632  
     — Law Fire Insurance Co., Gaw *v.*, 306  
     — Liquid Air Co., Ltd., *In re*, 91  
     — Natural Premium Life Association, Ltd., Anstey *v.*, 311  
     — United Shoe Machinery Co., Ltd. *v.* Simon Collier, Ltd., 457  
 Brixton Prison Governor, R. *v.*; *Ex parte* Auwera, 227  
     — Prison Governor, R. *v.*; *Ex parte* Calberla, 226  
     — Prison Governor, R. *v.*; *Ex parte* Percival, 227  
 Broadwood *v.* Broadwood; *In re* Broadwood's Settlements, 561  
 Brockett, *In re*; Dawes *v.* Miller, 679  
 Broderick *v.* London County Council, 380  
 Bromley Corporation *v.* Cheshire, 564  
     — Corporation, Davis *v.*, 360  
     — Rural District Council *v.* Croydon Corporation, 264  
 Brook, Ltd. *v.* Meltham Urban District Council, 661  
 Brooker, Dore & Co., Morrison Tinplate Co. *v.*, 19, 122  
 Brooks *v.* Bernstein, 23  
 Brossard, Eldridge and Another *v.*, 427  
 Brotherton *v.* Brotherton; *In re* Brotherton, 559  
 Brougham, Bottomley *v.*, 346  
     — Levene *v.*, 300  
 Brown, Barnes *v.*, 407  
     — *v.* Heywood; *In re* Dunster, 678  
     — Hindle *v.*, 22, 424  
     — J. and A., Bennetts & Co. *v.*, 579  
     — *v.* Perkins; *In re* Perkins, 530  
     — R. *v.*, 157  
     — Weir *v.*, 61  
     — & Co., Ltd., Lawrie *v.*, 393, 404  
 Browne *v.* Bailey, 246  
     — Powell *v.*, 436  
 Bruce, *In re*; Lawford *v.* Bruce, 223  
     — McColl *v.*; *In re* Walker, 468  
     — Smith, Glenie *v.*, 43  
 Brunning, *In re*; Gammon *v.* Dale, 530  
 "Bruxellesville, The," 599  
 Bryans, McBride *v.*, 209  
 Bryant, Cable *v.*, 195  
 Brydges *v.* Brydges and Wood, 283

- Bryson v. Gamage, *Ld.*, 460  
     — Jameson & Co., Aktieselskabet Hekla, *v.*, 588  
 Buchan, Earl of, *v.* Lord Advocate, 165  
 Buchheister & Co., Foong Tai & Co. *v.*, 568  
 Buckland, Ladbroke & Co. *v.*, 247  
 Buckworth, Blair *v.*, 427  
 Bulawayo Market and Offices Co., *Ld.*, *In re*, 75  
 Buluwayo Municipality *v.* Buluwayo Waterworks Co., *Ld.*, 211  
     — Waterworks Co., *Ld.*, Buluwayo Municipality *v.*, 211  
 Bullard, King, & Co., Pearce *v.*, 36  
 Bumpus, *In re*; *Ex parte* White, 29, 187  
 Bunbury *v.* Hibernian Bank, 114  
 Bundy *v.* Lewis, 234  
 Burdett, Rolt *v.*; *In re* Rolt, 467  
 Burgess *v.* Booth, 301  
 Burgiss *v.* Constantine, 570  
 Burgos *v.* Nascimento, 45, 586  
 Burgoyne *v.* Walker, 403  
 Burke *v.* Burke; *In re* Burke, 656  
     — *R. v.*, 143  
 Burkinshaw, Plumpton *v.*, 365  
 Burley *v.* Baird, 389  
 Burn and Berridge, *In re*, 613  
 Burnham, Roussell *v.*, 88  
 Burns, William Whiteley, *Ld. v.*, 533  
     — *v.* Manchester and Salford Wesleyan Mission, 398, 399  
 "Burns, The," 496  
 Burst and Perrin, *R. v.*, 130  
 Burton *v.* Atkinson, 15  
     — *v.* Bevan, 87  
 Burtwell, Page *v.*, 380  
 Bushey Urban District Council, Winslow *v.*, 439  
 Bussy *v.* Amalgamated Society of Railway Servants and Bell, 634  
 Butcher, *R. v.*, 643  
 Butler and Grove, Stourbridge Urban District Council *v.*, 270  
     — *v.* Southam; *In re* Brewster, 163  
     — Sweetman *v.*, 558  
 Butt, White *v.*, 488  
 Butterley Company, *Ld.*, *v.* New Hucknall Colliery Co., *Ld.*, 422  
 Butterworth & Co., West Riding of Yorkshire Rivers Board *v.*, 662  
 Buxton, Houghton *v.*, 238  
  
 C.  
 C. and Another, *In re*, 616  
 C. D. v. A. B., 283  
 Cable *v.* Bryant, 195  
 Cabot *v.* Att.-Gen. for Quebec, 177  
 Cæmentium (Parent) Co., *Ld.*, *In re*, 90  
 Cain *v.* Leyland & Co., 383  
 Caine, Palace Shipping Co. *v.*, 572  
 Cairn Line of Steamships, *Ld. v.* Corporation of Trinity House, 607  
 Caldicott *v.* Worcester Election Commissioners, 206  
 Caledonia Landing, Shipping, and Salvage Co., *Ld.*, and Colonial Fisheries Co., *Ld.*, East London Harbour Board *v.*, 604  
 Caledonian Ry., Glasgow Corporation *v.*, 267  
     — Ry. Co., Lord Advocate *v.*, 535  
 Calgary and Medicine Hat Land Co., *Ld.*, *In re*; Pigeon *v.* The Company, 70  
 Callard, Watt *v.*, 107  
 Callingham and Thompson, Leney and Sons, *Ld. v.*, 340  
 Calvert, Anderson *v.*, 345  
 Cameron *v.* Young, 551  
 Campbell *v.* The Australian Mutual Provident Society, 78  
 Canadian Forwarding and Export Co., "The Langfond" *v.*, 582  
     — Pacific Ry. Co., Toronto Corporation *v.*, 172  
 Cannock Chase Colliery Co., Anslow *v.*, 383  
 Canterbury Corporation *v.* Cooper, 335  
 Capes and Hirst, *In re*, 614  
 Carden, *Ex parte*; *Re* A Debtor, 33  
 Cardiff Union Assessment Committee, Taff Vale Ry. Co. *v.*, 517  
     — Union *v.* Banks, 464  
 Carnelly *v.* Cozens-Hardy and Others, 683  
 Carnley, Wilson *v.*, 112  
 Caroe *v.* Bayliss, 572  
 Carpalla United China Clay Co., *Ld.*, Great Western Railway Co. *v.*, 421  
 Carruthers and Leggatts, *Re*, 614  
 Carshalton Park Estate, *Ld.*, *In re*; Graham *v.* The Company, 434  
     — Park Estate, *Ld.*, *In re*; Turnell *v.* The Company, 434  
 Carter, *In re*, 220  
 Cassels *v.* Hudson; *In re* Hudson, 115  
 Castle Steam Trawlers, *Ld. v.* Great Western Ry. Co., 507  
 Catchpole, Solomon *v.*; *Re* Adkins, 684  
 Cates, Shaw *v.*, 656  
 Catt *v.* Wood, 243  
 Cavendish *v.* Tarry, 633  
 Cayzer, Irvine & Co, Malone *v.*, 379  
 Central (Unemployed) Body for London, The, Porton *v.*, 399  
 Chainé, Slade *v.*, 656  
 Challoner *v.* Robinson, 188  
 Chamberlain, Hopkinson *v.*, 547  
     — Hughes *v.*, 457  
 Chaplin & Co., *Ld. v.* Brammall, 114, 212  
 Chapman *v.* Michaelson, 426  
     — *v.* Smethurst, 44  
 "Charlotte, The," 316, 543



- Cheese *v.* Keen, 437, 613  
 Cheshire, Bromley Corporation *v.*, 564  
 Chesney *v.* Newsholme, 197  
 Cheshire's Settled Estates, *Re*, 554  
 Chester *v.* Henson; *In re* Henson, 222, 431, 697  
   — Union, Chester Waterworks Co. *v.*, 669  
   — Waterworks Co. *v.* Chester Union, 669  
 Chesterfield Gas and Water Board and Lucas,  
   *In re*, 99  
   — Lord, *v.* Harris, 191, 231  
 Chetwynd, *Ex parte*; *R. v.* Crossman, 369  
 China Navigation Co., *Ld.*, *The, v.* Lords Com-  
   missioners of the Admiralty; "The  
   Chinkiang," 590  
 Chinn, Heath *v.*, 435  
 Chippendall *v.* Laidley & Co., 169  
 Chiswick Urban District Council, Brentford Gas  
   Co. *v.*, 253  
   — Urban District Council, *R. v.*, 360  
 Chorley Corporation, Crump *v.*, 269  
 "City of Berlin, *The*," 594  
 City of Dublin Steam Packet Co., Great Southern  
   and Western Ry. Co. and Midland  
   Great Western Ry. of Ireland Co.  
   *v.*, 504  
 City of Dublin Steam Packet Co. *v.* *R.*, 108  
 "Clan Cumming, *The*," 595  
 Clan Steam Trawling Co., *Ld. v.* Aberdeen  
   Steam Trawling and Fishing Co., *Ld.*,  
   602  
 Clapperton, Train *v.*, 653  
 Clare Rural District Council *v.* Collen, 122  
 Clark *v.* Balm Hill and Sons, 45  
   — Blair *v.*; Graydon, Garnishee, 480  
   — Johnson *v.*, 277  
   — W. G., and Son, Fitzgerald *v.*, 391  
 Clarke, *In re*; Clarke *v.* St. Mary's Convalescent  
   Home, 489  
   — Beresford *v.*, 548  
   — Jessop *v.*, 623  
   — Richard & Co. and Charles Gorst *v.*  
   Horrocks, 193  
 Clayhills, Allison *v.*, 610  
 Clayton, Allworthy and Walker *v.*, 458  
   — *v.* Jones' Sewing Machine Co., *Ld.*, 392  
 Clifford, Hill *v.*, 450  
   — *v.* Phillips, 450  
   — *v.* Timms, 450  
 Clydesdale Shipowners' Co., *Ld. v.* Gallaher, 584  
 Clinton *v.* Bennett, 123  
   — Smith (W. H.) and Son *v.*, 112, 492  
 Cluer, Davis *v.*; *In re* Hill, 60  
 "Clutha Boat, *The*," 591  
 Coal Co-operative Society, *Ld.*, London County  
   Council *v.*, 411  
 Coats, Lime *v.*, 86  
 Cobbett *v.* Wood, 611  
 "Cockatrice, *The*," 595  
 Cohen *v.* Bayley-Worthington, 526  
   — *v.* Rebow, 29  
   — *v.* Seabrook Bros., 381  
 Cohn, Oettinger *v.*, 539  
 Coldrick *v.* Partridge, Jones & Co., 402  
 Coleman, *In re*, 336, 561  
   — *R. v.*, 153  
 Collen, Clare Rural District Council *v.*, 122  
 Collier & Co., *Ex parte*; *In re* Crow, 31  
   — Simon, *Ld.*, British United Shoe  
   Machinery Co., *Ld. v.*, 457  
 Collinson, Royal College of Veterinary Surgeons  
   *v.*, 407  
 Colman and Watson, *In re*, 18, 486  
 Colne Valley Water Co. *v.* Hall, 666  
 Colonial Fisheries and Caledonian Landing,  
   Shipping and Salvage Co., East London  
   Harbour Board *v.*, 604  
 Colquhoun *v.* Widows' Fund of the Faculty of  
   Procurators in Glasgow, 310  
 Colwyn Bay and Colwyn Urban District Council,  
   Horton *v.*, 564  
 Comar, *Re*; *Ex parte* Ronald, 35, 248  
 Comerford *v.* Britannic Assurance Co., 309  
 Commissioner of Public Works, Houlder Brothers  
   & Co. *v.*, 589  
 "Commonwealth, *The*" (*or* "The Welsh Girl"),  
   317  
 Conner *v.* Quest, 631  
 Connor, *R. v.*, 136  
 Conservators of the River Thames and Easton  
   Gibb & Son, Queens of the River  
   Steamship Co. *v.*, 663  
 Consolidated Pneumatic Tool Co. *v.* Ingersoll  
   Sergeant Drill Co., 488  
 Constantine, Burgess *v.*, 570  
 Conway *v.* Wade, 635  
 Conyngham (Marchioness), *In re*; Ramsden *v.*  
   Conyngham, 684  
   — Ramsden *v.*; *In re* Conyngham (Mar-  
   chioness), 684  
 Cook, Sydney Municipal Council *v.*, 5  
 Cooke *v.* Midland Great Western Ry. Co. of  
   Ireland, 442  
   — Wrightson *v.*; *In re* Wrightson, 655  
 Cooper, Barracough *v.*, 691  
   — Blakiston *v.*, 295  
   — Canterbury Corporation *v.*, 335  
   — Jackson *v.*; *Re* Eardly and Birks' Settle-  
   ments, 562  
   — *v.* Morgan, 549  
   — *v.* Ogden Oldham Election, 205  
   — *R. v.*, 140  
 Cooper-Dean *v.* Badham, 461  
 Cope, *In re*; Cross *v.* Cross, 692  
   — *v.* Crossingham, 637  
 Copestake *v.* Hoper, 115  
 Copland's Executors *v.* Milne, 682

- Corfield (otherwise Marshall). *Marshall v.* 276  
 Cork Rural Council *v.* Walsh, 238  
 Corns *v.* Harrison; *In re* Lambert, 692  
 Corporation of Trinity House, Cairn Line of Steamships, *Ld. v.*, 607  
 Corsellis *v.* London County Council, 259, 417  
 Couldon, *In re*; Couldon *v.* Couldon, 690  
 Coulson, Prichard *v.*; *Re* Coulson's Trusts, 652  
 County of London Electric Supply Co. *v.* Perkins, 412  
 Coventry Ordnance Works, *Ld.*, Vickers, Sons and Maxim, *Ld. v.*, 477  
 Cox Moore *v.* Peruvian Corporation, *Ld.*, 71  
 — Townsend *v.*, 173, 484  
 Cowley *v.* Taylor; Ackers and Others, Garnishees, 125  
 Cowper *v.* Milburn, 194  
 Cozens *v.* Rutherford, 397  
 Cozens-Hardy, Carnelly *v.*, 683  
 Crabtree, J. and W., *Ld.*, Premier Industrial Bank, *Ld. v.*, 43  
 Craig *v.* Dowding, 456  
 "Craigellachie, The," 594  
 Crane, *In re*; Adams *v.* Crane, 698  
 Craven, *In re*; Crewdson *v.* Craven, 675, 683, 684  
 — *v.* Craven, 450  
 Crawley, *R. v.*, 146  
 Crawshaw Bros., Cyfartha, *Ld.*, Gough *v.*, 381, 383  
 Creditors, The Judgment, *Ex parte*; *In re* A Judgment Debtor, 31  
 Cremins *v.* Guest, Keen and Nettlefold, 391  
 Crewdson *v.* Craven; Craven, *In re*, 675, 683, 684  
 Cribb *v.* Kynochs, *Ld.* (No. 2), 381  
 Crichton and Stevenson *v.* Love, 545  
 Crick, Harnett *v.*, 170  
 Crompton and Shawcross, *Ld.* and Hindley Field Coal Co. *v.* North Central Waggon Co., 108  
 Croome, Greene *v.*, 480  
 Crosbie-Hill *v.* Sayer, 433  
 Cross, Batho *v.*; *Re* Batho, 220, 676  
 — *v.* Cross; *In re* Cope, 692  
 Crossingham, Cope *v.*, 637  
 Crossley Bros. (*Ld.*) *v.* Lee, 187  
 Crossman, *R. v.*; *Ex parte* Chetwynd, 369  
 Crouch, Webb *v.* (Att.-Gen. for Australia intervening), 484  
 Crow, *In re*; *Ex parte* Collier & Co., 31  
 Crowe, Westgate *v.*, 124  
 Crown Fire Lighter Co., Richmond *v.*, 483  
 — Grain Co., *Ld.*, The, and Att.-Gen. for Manitoba (intervenant) *v.* Day, and Att.-Gen. for Canada (intervenant), 172  
 — Steamship Co., *Ld. v.* Leitch, 584  
 Croydon, *Re*; Hincks *v.* Roberts, 351  
 — Corporation *v.* Croydon Rural District Council, 511  
 Croydon Corporation, Bromley Rural District Council *v.*, 264  
 — Rural District Council *v.* Sutton District Water Co.; Ewart, Third Party, 109  
 Crozier, Stephens & Co. *v.* Auerbach, 473  
 Crump *v.* Chorley Corporation, 269  
 — *v.* Lewis, 359  
 "Crusader, The," 601  
 Cuenod William & Co. *v.* Leslie and Wife, 280  
 Cuffe, *In re*; Fooks *v.* Cuffe, 182  
 Cullen *v.* McNair, 233  
 Cunard Steamship Co., *Ld.*, *In re*, 73  
 — Steamship Co. *v.* Hopwood, 73  
 Cundy *v.* Lerwill and Pike, 633  
 Cunningham, *Ld.*, Zugg *v.*, 395  
 Curator of Intestate Estates, Att.-Gen. for New South Wales *v.*, 169  
 Curry, *Re*; Curry *v.* Curry, 698  
 Curtice *v.* London City and Midland Bank, 25  
 Cutler, Bank of England *v.*, 28, 89  
 Cyclists' Touring Club, Yates *v.*, 79
- D.
- Dairy Supply Co., *Ld.*, Tyler *v.*, 235  
 Dakhyl *v.* Labouchere, 345  
 Dale, Gammon *v.*; *In re* Brunning, 530  
 Dalmeny Oil Co., *Ld.*, Rintoul *v.*, 386  
 Dalzell, *In re*, 32  
 Dance, Batistoni *v.*, 23  
 Daniel, Bargewell *v.*, 396  
 Daniels, Birstall Candle Co. *v.*, 124  
 Dansk Rekyhlriffel Syndicat Aktieselskab *v.* Snell and Rexer Arms Co., 28, 454, 489  
 Darby, *In re*; Rendall *v.* Darby, 432, 697  
 Darling and Sons *v.* Raeburn, 580  
 Davidson, *In re*; Minty *v.* Bourne, 60  
 Davies *v.* Seisdon Union, 520  
 — Thorp *v.*, 420  
 Davis *v.* Bromley Corporation, 360  
 — *v.* Cluer; *In re* Hill, 60  
 — *v.* Gas Light and Coke Co., 84  
 — *v.* Harrison; *In re* Lewis, 695  
 — Rees *v.*, 237  
 — *v.* Wallis, 514  
 — Weymouth *v.*, 527  
 Davy, *In re*; Hollingworth *v.* Davy, 688  
 Dawes *v.* Ixer; *In re* Barnett, 467  
 — *v.* Miller; *In re* Brocket, 679  
 — *v.* Wilkinson, 234  
 Dawson *v.* McKenzie, 41  
 Day and Attorney-General for Canada (intervenant), Crown Grain Co. and Att.-Gen. for Manitoba (intervenant) *v.*, 172  
 — Timothy *v.*, 481  
 Daye, *R. v.*, 215

- Debendra Nath Dutt *v.* Administrator-General of Bengal, 219  
 De Bernardy, Wedgerfield *v.*, 4  
 Debi Dayal Sahu, Raja Rai Bhagwat Dayal Singh *v.*, 180  
 Debtor, The, *Ex parte*; *In re* Bell, 38  
   — *In re* A; *Ex parte* The Debtor, 30, 31  
   — *In re* A; *Ex parte* The Petitioning Creditor, 30, 34  
   — *In re* A Judgment; *Ex parte* The Judgment Creditors, 31  
   — *Re* A; *Ex parte* Carden, 33  
 Defence Acts, *In re*; *Ex parte* Governors of St. Thomas' Hospital; *Ex parte* His Majesty's Principal Secretary of State for War Department, 525  
 Defries and Others, Peckover *v.*, 323  
 De la Bere *v.* C. Arthur Pearson, Ltd., 106  
 Delahunty, *In re*, 693  
 Delvin Union, R. *v.*, 366  
 De Marney, R. *v.*, 144  
 De Meo, Don Francesco *v.*, 535  
 De Moleyns and Harris' Contract, *In re*, 364  
 Dempster *v.* Baird, 384  
 Denholm's Trustees *v.* Denholm, 682  
 Denis *v.* Denis; *In re* Denis, 682  
 Dent's Settlement Trusts, *In re*; Parker *v.* Dent, 656  
 De Pass *v.* Sonnenthal; *In re* Salaman, 690  
 De Peyer *v.* R., 298  
 Deschamps *v.* Miller, 4  
 D'Etchegoyen *v.* D'Etchegoyen, 287  
 De Vesci (Evelyn Countess) *v.* O'Connell, 483, 529  
 Dewar *v.* Goodman, 342  
 Dewhurst *v.* Mather, 397  
 Dey, Thomas *v.*, 249  
 Dibble, R. *v.*, 129  
 Dibden *v.* Skirrow, 230  
 Dick *v.* Audsley, 62  
 Dickens *v.* Spence, 19  
 Dickin and Welsall's Contract, *In re*, 559  
 Dickinson *v.* Barmack, Ltd., 388  
 Dicksee, *Ex parte*; *In re* Pope, 40  
 Dillon, Farndale *v.*, 325  
 Discoverers' Finance Corporation, Ltd., *In re*, 90  
 Dittmar *v.* Wilson, Sons & Co., 398  
 Dodson, *Re*; Yates *v.* Morton, 449  
 Donaldson *v.* Rutter; *In re* Rutter, 275  
 Doncaster Rural District Council, Hague *v.*, 498  
 Don Francesco *v.* De Meo, 535  
 Donnelly *v.* Baird & Co., 394  
 Donovan *v.* Todd, Burns & Co., 184  
 Doodeward, Spence *v.*, 182  
 Dothie *v.* MacAndrew & Co., 398  
 Douglas *v.* Baynes, 172  
 Douglas-Menzies *v.* Umphelby, 687  
 Dover Coalfield Extension, Ltd., *In re*, 76  
 Dowding, Craig *v.*, 456  
 Dryden, Elder *v.*, 234  
 Dublin Corporation, Pearson *v.*, 51, 496  
 Du Cros *v.* Lambourne, 132, 622  
 Dun, MacIntosh *v.*, 346  
 Duncan *v.* Knill, 16  
 Dunleavy, R. *v.*, 156  
 Dunning *v.* Owen, 323  
 Dunsmuir and Jackson, McInnes *v.*, 378  
 Dunster, *In re*; Brown *v.* Heywood, 678  
 Dunston, Kyle *v.*, 671  
 Durose *v.* Wilson, 137  
 Dyson, R. *v.*, 142, 155  
   — *v.* Speight; *Re* Lacy, 223  
  

E.

 E. *v.* E., P. and N., 292  
 East Grinstead Gas and Water Co., Marriott *v.*, 668  
   — London Harbour Board *v.* Caledonia Land-  
   ing, Shipping, and Salvage Co. and  
   Colonial Fisheries Co., Ltd., 604  
 Eastern Extension, Australasia, and China Tele-  
 graph Co. and Great Northern Telegraph  
 Co., Agincourt Steamship Co. *v.*, 629  
 Eardly and Birks' Settlements, *Re*; Jackson *v.*  
   Cooper, 562  
 Ebberrn *v.* Fowler, 554  
 Eddowes and Sons, *Re*, 613  
 Eden *v.* Eden, 274  
 Edinburgh Magistrates, Inland Revenue, *v.* 298  
 Edison-Bell Consolidated Phonograph Co.,  
   National Phonograph Co. *v.*, 542  
 Edminson, Lawson *v.*, 324  
 Edmonton Union, West Ham Union *v.*, 465  
 Edwards, Haslam & Co., Garnishees, Woodham  
   Smith *v.*, 481  
   — *v.* Mallan, 122  
 Egham Urban District Council, Holloway *v.*,  
   258  
 Egmont (Earl of), Lefroy *v.*; *In re* Egmont's  
   (Earl of) Trusts, 556  
 Egmont's Settlement (Earl of), *In re*, 555  
 Elder *v.* Dryden, 234  
   — Vetch *v.*, 557  
 Eldridge and Another *v.* Brossard, 427  
 Electromobile Co., Ltd., *v.* British Electromobile  
   Co., Ltd., 632  
 Elementary Education Acts, 1870, 1873, *In re*,  
   96  
 Elgood, Pretoria Pietersburg Railway Co., Ltd. *v.*,  
   296  
 Elliott, R. *v.*, 130, 133  
 Ellis and Ellis, *Re*, 39  
   — *v.* Glover and Hobson, Ltd., 430  
 Elliston *v.* Reacher, 547  
 "El Salto, The," 569

- Elswick Steamship Co. *v.* Montaldi, 582  
 Elvet Colliery Co., Forster *v.*; Quin *v.* Same Co.,  
     Morgan *v.* Same Co., 420  
 Emanuel *v.* Symon, 103  
     — Hospital, *Ex parte*, 97  
 Empress Assurance Corporation Ltd., Assicurazioni  
     Generali de Trieste, *v.*, 316  
     — Assurance Corporation, Ltd., United States  
         Shipping Co. *v.*, 313  
 English Crown Spelter Co., Ltd. *v.* Baker, 298  
     — and Scottish Law Life Assurance Associa-  
         tion, Wigan *v.*, 308  
 Enniscorthy Guardians, Murphy *v.*, 396  
 Erskine, Barne *v.*; *In re* Boucherett, 654  
 Escalera Silver Lead Mining Co., Ltd., *In re*;  
     Tweedy *v.* The Company, 69  
 Etherington and Lancashire and Yorkshire  
     Accident Insurance Co., *In re*, 305  
 “Etna, The,” 593  
 “Europa, The,” 575  
 Evans, *Re*; Thomas *v.* Thomas, 531, 699  
     — *v.* Battersea Borough Council, 514  
     — Hinde *v.*, 266  
     — *v.* Jones, 239  
     — *v.* Keane, 490  
     — *v.* Nevill, 470  
     — *v.* Weatheritt, 235  
 Everard, *In re*; Woodward *v.* Phillips, 678  
 Executors, Cape Town, Board of, Stephan *v.*, 485
- F.
- Faber, Baker *v.*, 487  
     — Oceanic Steamship Co. *v.*, 312  
 Fairbrother, R. *v.*, 143  
 Fairfax Peerage, The, 183  
 Falconer *v.* Whyte, 233  
 Falconer's Trusts, Property and Estate Co., Ltd.,  
     *In re*, *v.* Frost, 470  
 Falls *v.* Alford; *In re* Black, 693  
 Fargrove Steam Navigation Co., Att.-Gen.  
     *v.*, 573  
 Farmer *v.* Long, 415  
 Farndale *v.* Dillon, 325  
 Farquhar *v.* Newbury Rural District Council,  
     258, 259  
 Faulder, Henry & Co., Ltd., Horn *v.*, 81  
 Faversham Corporation, Owen *v.*, 446  
 Fawcett *v.* Horsfield, 123  
 Fay *v.* The Society of Notaries at Melbourne, 444  
 Fear, Morgan *v.*, 193  
 Feeney, *In re*; Inglis *v.* Birmingham Corpora-  
     tion, 685  
 Felixstowe Gas Light Co., Att.-Gen. *v.*, 535  
 Ferguson, Selkirk *v.*, 166  
 Fergusson *v.* Malvern Urban District Council,  
     660  
 Ferniehough *v.* Wilkinson; *In re* Howe, 683
- Field *v.* Receiver for Metropolitan Police District,  
     135  
 Fieldwick, *Re*; Johnson *v.* Adamson, 279  
 Finburgh *v.* Moss's Empires, Ltd., 347  
 Finch *v.* Bannister, 565  
     — R. *v.*, 138  
 Findlay, Foot *v.*, 240  
 Fine Cotton Spinners' and Doublers' Associa-  
     tion, Ltd., The, and John Cash and Sons,  
     Ltd. *v.* Harwood Cash & Co., Ltd.,  
     632  
 Finney *v.* Govett, 675  
 Finsbury Borough Council, Williams' Music and  
     General Printing Co. *v.*, 414  
 Fittall, Kent *v.*, 208  
 Fittall (No. 2), Kent *v.*, 208  
 Fitzgerald *v.* Clark, W. G. and Son, 391  
     — *v.* Persse, Ltd., 74  
 Fitz-Gibbon *v.* McNeill, 693  
 Fitzhardinge, Lord, *v.* Purcell, 665  
 Fitzsimmons and Duncan *v.* Kemp & Co., Ltd.,  
     347  
 Fleetwood Urban District Council, Attorney-  
     General of the Duchy of Lancaster, *v.*  
     359  
 Fleming *v.* London County Council, 411  
 Flemming, Griffiths *v.*, 310  
 Fletcher, R. *v.*, 621  
 Flint, Webb *v.* (Att.-Gen. for Australia inter-  
     vening), 484  
 Folkestone Corporation *v.* Rook, 269  
 Follick, *In re*, 34  
 Fooks *v.* Cuffe; *In re* Cuffe, 182  
 Foong Tai & Co. *v.* Bucheister & Co., 568  
 Foot *v.* Findlay, 240  
 Ford, Marshall *v.*, 623  
 “Forfarshire, The,” 603  
 Forsland and Son, Reindeer Steamship Co. *v.*, 582  
 Forster *v.* Elvet Colliery Co., 420  
 Foster *v.* Proprietors of the Athenæum News-  
     room and Library, Liverpool, 301  
 Fountaine, *Re*, Dowler, *Re*; Fountaine *v.* Am-  
     herst, Baron, of Hackney and Others,  
     655  
     — Amherst, Baron, of Hackney and Others,  
     *v.*; *Re* Fountaine, *Re* Dowler, 655  
 Fowler, Ebborn *v.*, 554  
     — W. H., *In the Goods of*, 221  
 Fox, R. *v.*; *Ex parte* Plympton St. Mary Rural  
     District Council, 362  
 Franklin and Son, Major Bros. *v.*, 639  
 Frederick *v.* Bognor Water Co., 670  
 Freeman, *In re*; Shilton *v.* Freeman, 61  
 “Freemasons' Arms, The”; *In re* Lassells and  
     Sharman, Ltd., 321  
 “Fremad, The,” 601  
 French *v.* Hills Plymouth Co., 441  
     — Morton *v.*, 244



- French (No. 2), *Bake v.*, 612  
 Frimley and Farnborough District Water Co.,  
*Att.-Gen. v.*, 667  
 Frost, Falconer's Trusts, Property and Estates  
 Co., *Ld.*, *In re, v.*, 470  
 Frost and Reed *v. Olive Series Publishing Co.*,  
 119  
 Fulbrook, *Tate v.*, 117  
 Fullerton & Co., *Martin v.*, 390  
 Fulton *v. Norton*, 174  
 — *Saxby v.*, 249  
 Furness, Withy & Co., *Ld. v. Pickering*, 477
- G.
- "G. and E., The," 599  
 Gaboriau and H. Bourguigum & Co. *v. D. Maxwell & Co.*, 102  
 Gadd *v. Munday*, 478  
 Gallaher, Clydesdale Shipowners Co., *Ld.*, *v.*, 584  
 Gamage, A. W., Gillette Safety Razor Co. *v.*,  
 453  
 — *Ld.*, *Bryson v.*, 460  
 Gamble, *Armstrong v.*; *In re Turner*, 696  
 Gammon *v. Dale*; *In re Brunning*, 530  
 Gas Light and Coke Co., *Davis v.*, 84  
 Gaw *v. British Law Fire Insurance Co.*, 306  
 Gawley *v. Belfast Corporation*, 497  
 Gedney, *In re*; *Smith v. Grummit*, 222  
 Geirionydd Rural District Council *v. Green*, 263  
 General Accident Fire and Life Assurance Corporation, *Ld. v. McGowan (Surveyor of Taxes)*, 299  
 — *Billposting Co., Ld. v. Atkinson*, 404, 633  
 — *Steam Navigation Co., Ld., London County Council v.*, 663  
 — *Steam Navigation Co., Smackman v.*, 586  
 George *v. Glasgow Coal Co.*, 395  
 — *R. v.*, 131, 148  
 Gestetner's Trade Mark, *In re*, 639  
 Getty *v. Getty*, 288  
 Gibbons *v. Vanguard Motorbus Co.*, 446  
 Gilbert *v. Gilbert*; *In re Gilbert*, 688  
 Gill *v. Aberdeen Steam Trawling and Fishing Co., Ld.*, 399  
 — *Maddison v.*; *In re Sharpe*, 681  
 Gillespie *v. Riddell*, 551  
 Gillette Safety Razor Co. *v. Gamage, A. W.*,  
 453  
 Gingell, Son and Foskett, *Ld. v. Stepney Borough Council*, 376  
 Glasgow Coal Co., *George v.*, 395  
 — *Corporation v. Caledonian Ry.*, 267  
 — *Corporation, Stevenson v.*, 440  
 — *and South Western Ry., Grant v.*, 390  
 Glass, *Ex parte*; *In re Macfadyen*, 29  
 Glenie *v. Bruce Smith*, 43  
 Glover and Hobson, *Ld.*, *Ellis v.*, 430  
 Glukman, *In re*; *Att.-Gen. v. Jefferys*, 218
- Godfrey, *Spooner v.*, 106  
 Gold *v. Gold*, 289  
 Goldstraw *v. Jones*, 361  
 Good, *In the Goods of*, 221  
 Goode, *London County Council v.*, 333  
 Gooding, *Great Southern and Western Railway v.*,  
 129  
 Goodman, *Dewar v.*, 342  
 Goodson *v. Baker*, 249  
 — *v. Grierson*, 249, 490  
 Goold, R. W., & Co., *Thompson v.*, 384  
 Gordon Hotels, *Ld.*, *Corporation of Westminster v.*, 373, 416  
 Gore-Booth's Estate, *In re*, 469  
 Gorst, Charles, and Richard Clarke & Co. *v. Horrocks*, 193  
 Gough *v. Bolton*, 326  
 — *v. Crawshaw Bros., Cyfartha, Ld.*, 381,  
 383  
 — *Rowe v.*, 326  
 Gourlay, *Murray v.*, 385  
 Govett, *Finny v.*, 675  
 Gozney *v. Bristol, West of England and South Wales Operatives' Trade and Provident Society*, 637  
 Graham, *Bell v.*, 203  
 — *v. The Company*; *In re Carshalton Park Estate Ld.*, 434  
 — *v. Hart*, 134  
 — *Marshall v.*, 203  
 — *Richardson v.*, 194  
 — *v. White and Parke*, 615  
 — *and Wigley, Re*, 612  
 Grainger, *Reeves v.*, 676  
 Gramophone and Typewriters, *Ld. v. Stanley*, 297  
 Grand Trunk Ry. Co. of Canada *v. Robertson*,  
 327  
 Grant *v. Glasgow and South Western Ry.*,  
 390  
 Gray *v. Allison*, 634  
 — *Hooker v.*, 13  
 Great Central Ry. Co. and Great Northern Ry.  
*Co., In re*, 504  
 — *Central Ry. Co. v. Banbury Union Assessment Committee*, 518  
 — *Central Ry. Co., Jones v.*, 185  
 — *Central Ry. Co. v. Lancashire and Yorkshire Ry. Co.*, 503  
 — *Central Ry. Co. v. Sheffield Union Assessment Committee*, 519  
 — *Eastern Ry. Co. v. London County Council*, 95  
 — *Eastern Ry. Co., Trustee in Bankruptcy of Lord v.*, 47  
 — *Northern Ry. Co., Att.-Gen. v.*, 508  
 — *Northern Ry. Co., R. v.*, 488  
 — *Northern, Piccadilly and Brompton Ry. Co. v. Att.-Gen.*, 536

- Great Northern, Piccadilly and Brompton Ry. Co., *Macauley v.*, 443  
 — Northern Ry. Co. and Great Central Ry. Co., *In re*, 504  
 — Southern and Western Ry. Co. *v.* Gooding, 129  
 — Southern and Western Ry. Co. and Midland Great Western Ry. of Ireland Co. *v.* City of Dublin Steam Packet Co., 504  
 — Western and Metropolitan Dairies, *Ld.* *Bellamy v.*, 671  
 — Western Ry. Co. *v.* Carpalla United China Clay Co., *Ld.*, 421  
 — Western Ry. Co., Castle Steam Trawlers, *Ld.* *v.*, 507  
 — Western Ry. Co. *v.* Midland Ry. Co., 502, 630  
 — Western Ry. Co. *v.* Phillips & Co., 503  
 — Western Ry. Co., *Reed v.*, 388  
 Green, Geirionydd Rural District Council *v.*, 263  
 — *Hunt v.*, 645  
 — *v.* Newport Union Assessment Committee; *Stead v.* Newport Union Assessment Committee, 517  
 — Holland & Co., *Belguard v.*, 109  
 Greenaway, *R. v.*, 139  
 Greenburg, *Landa v.*, 110, 120, 492  
 Greene *v.* Croomie, 480  
 Greenshields, *Cowie & Co. v.* Stephens and Sons, 314  
 Greenwood *v.* Greenwood, 400, 476  
 Gregory, Apothecaries' Society *v.*, 406  
 — *Watson and Parker v.*, 8  
 Greig *v.* Macleod, 325  
 — and Metcalf, *Att.-Gen. v.*, 413  
 Grenville, *Kodak, Ld. v.*, 644  
 Gresham Publishing Co., *Kenny v.*, 650  
 Gribbon *v.* Gribbon, 288  
 Grierson, *Goodson v.*, 249, 490  
 Griffin, *Mansell v.*, 203  
 — *Sadd v.*, 612  
 Griffiths *v.* Flemming, 310  
 Grimsby Palace Theatre, etc., *Rushbrook v.*, 401  
 Grimthorpe, *In re Lord*; *Beckett v.* Grimthorpe, 163  
 Groh *v.* Hesketh, 326  
 Gruban, *Kirchner & Co. v.*, 19, 100, 302, 404, 489  
 Grummitt, *Smith v.*; *In re Gedney*, 222  
 Guernsey Mutual Transport Co. *v.* London, Brighton and South Coast Ry. Co. and London and North Western Ry. Co., 506  
 Guest, *Keen and Nettleford, Cremins v.*, 391  
 "Guildhall, The," 594  
 Guillemand *v.* Silverthorne, 338  
 Gully *v.* Gully, 104  
 Gunter *v.* James, 447  
 Gurney, *Sullivan v.*; *In re Gurney's Settlement*, 555  
 Gyde, *R. v.*, 132  
 Gylee, *R. v.*, 156  
 H.  
 Haddington Corporation, *Montgomerie & Co., Ld., v.*, 551  
 Hadley, *In re*, 162  
 "Hagen, The," 6, 601  
 Hague *v.* Doncaster Rural District Council, 498  
 Haigh *v.* Purcell, 475  
 Hales *v.* Kerr, 214  
 Hall, *Colne Valley Water Co. v.*, 666  
 — (otherwise *Barrar v.* Hall, 286  
 — *Herskind v.*, 185  
 — *Portsmouth Corporation v.*, 271  
 — *Reversionary and General Securities Co. v.*; *In re Beard*; *Beard v.* Hall, 694  
 Hamel and Horley *v.* The Peninsular and Oriental Steam Navigation Co., 314  
 Hamilton, *R. v.*, 144, 149, 274  
 Hampshire, *R. v.*, 150  
 Hampson *v.* Hampson, 289  
 Hampstead Additional Burial Ground, *In re*, 53  
 Hanrahan *v.* Leigh Urban District Council, 361  
 Hapelman *v.* Poole, 389  
 Harding, *R. v.*, 143  
 Harding-Cox *v.* Harding-Cox, 289  
 Hare, *In re*; *Leycester-Penrhyn v.* Leycester-Penrhyn, 560  
 Hargreaves *v.* Spackman, 237  
 — *Paul v.*, 671  
 Harnett *v.* Crick, 170  
 Harper *v.* McIntyre, 657  
 — *Wilson v.*, 10, 110  
 Harperink, *Mahomed Kala Mea v.*, 180, 548  
 Harriman *v.* Harriman, 284  
 Harrington, *In re*; *Wilder v.* Turner, 41, 223  
 Harris' Contract, *In re De Moleyns and*, 364  
 Harris, *Jayes v.*, 250  
 — *Lord Chesterfield v.*, 191, 231  
 Harrison, *Corns v.*; *In re Lambert*, 692  
 — *Davis v.*; *In re Lewis*, 695  
 — *In re*, 612  
 Harrogate Corporation *v.* McKay, 670  
 Hart, *Biddle v.*, 401  
 — *Graham v.*, 134  
 Hartley Colliery Accident Relief Fund, *In re*; *Plummer v.* Jordan, 58  
 — *v.* Rochdale Corporation, 666  
 Harvey, *Oldroyd v.*; *In the Estate of Lunn*, 676  
 Harwood Cash & Co., *Ld.*, *Fine Cotton Spinners' and Doublers' Association, Ld., and John Cash and Sons, Ld., v.*, 632  
 Hastings Corporation *v.* Letton and Sons, 120  
 Hawes, *R. v.*, 144

- Hawthorne, Leslie & Co., Wallace *v.*, 400  
 Hay *v.* Torbet, 428  
 Hay's Wharf, *Ld. v. St. Olave's Trustee*, 524  
 Haylett *v.* Vigor & Co., 379  
 Haynes ; Third Party, Howe *v.* Oliver, 328  
 Hayward and Judge Selfe, *R. v.*, 124  
 Hazeldine's Trusts, *In re*, 350  
 Heap *v.* Nash, 11  
 Heath *v.* Chinn, 435  
     — *v.* Brighton Corporation, 445  
     — Tannenbaum & Co. *v.*, 185, 306  
 Henderson, Munro *v.*, 679  
     — Thomson *v.*; Mackay *v.* Henderson's Transvaal Estates, *Ld.*, 92  
 Henderson's Transvaal Estates, *Ld.*, Bisgood *v.*, 83  
 Hennessy & Co. *v.* Keating, 643  
 Henson, *In re* ; Chester *v.* Henson, 222, 431, 697  
 Herring, *In re* ; Murray *v.* Herring, 683  
 Herskind *v.* Hall, 185  
 Hesketh, Groh *v.*, 326  
 Hewlett *v.* London County Council, 498  
 Heydenrych, Standard Bank of South Africa *v.*, 171  
 Hibernian Bank, Bunbury *v.*, 114  
 "Hibernian Co.," Tasker & Co. *v.* Allen Bros. & Co., 587  
 Higgins *v.* Searle, 265  
 Hill *v.* Begg, 397  
     — *v.* Clifford, 450  
     — *In re* ; Davis *v.* Cluer, 60  
 Hillingden, Spicer *v.*, 69  
 Hills Plymouth Co., French *v.*, 441  
 Hincks *v.* Roberts ; *In re* Croydon, 351  
 Hinde *v.* Evans, 266  
 Hindle *v.* Brown, 22, 424  
     — and Palmer *v.* Noblett, 624  
 Hingston *v.* Sidney ; *In re* Sidney, 61  
 Hirst and Capes, *In re*, 614  
 Hitchcock *v.* The Stainer Manufacturing Co., 478  
 Hodgkins *v.* Simpson, 247  
 Hodgson, Walker, Peter & Sons, *Ld.*, *v.*, 186  
 Holland *v.* Holland, 166  
     — Sarpy *v.*, 119  
 Hollingworth *v.* Davy ; *In re* Davy, 688  
 Hollis *v.* Young, 16  
 Holloway *v.* Egham Urban District Council, 258  
 Holmes, Holmes *v.* ; *In re* Moon, 225  
     — *In re* ; *Ex parte* Ashworth, 37, 333  
 Holsworthy Urban District Council *v.* Holsworthy Rural District Council, 355, 424, 496  
 Holt *v.* Holt, 293  
 Holywell Iron Co., *Ld. v.* Midland Ry. Co., 506  
 Hooker *v.* Gray, 13  
 Hooper *v.* Riddle & Co., 644  
 Hooson, Lister *v.*, 39  
 Hoper, Copestake *v.*, 115  
 Hopkins, Kelly *v.*, 385  
 Hopkinson *v.* Chamberlain, 547  
 Hopwood, Cunard Steamship Co. *v.*, 73  
 Hordern *v.* Hordern, 678  
 Horley and Hamel *v.* The Peninsular and Oriental Steam Navigation Co., 314  
 Horlick, *Ex parte*, 371  
 Horn *v.* Faulder, Henry & Co., *Ld.*, 81  
 Hornby *v.* McLaren, 26  
 Horner *v.* Stepney Union Assessment Committee, 372, 512  
 Horrocks, Richard Clarke & Co. and Charles Gorst *v.*, 193  
 Horton *v.* Colwyn Bay and Colwyn Urban District Council, 564  
 Horsfield, Fawcett *v.*, 123  
 Horsley Line, *Ld. v.* Roechling Bros., 577, 588  
 Houghton *v.* Buxton, 238  
 Houlder Bros. & Co. *v.* Commissioner of Public Works, 589  
     — Bros. & Co. and Alexander Howden & Co. *v.* R. P. Houston & Co., 111  
     — Line, *Ld.*, The Anglo-Algerian Steamship Co. (1896) *v.*, 160  
 Houston, R. P. & Co., Houlder Bros. & Co. and Alexander Howden & Co. *v.*, 111  
 Howatson *v.* Webb, 167  
 Howe, *In re* ; Ferniehough *v.* Wilkinson, 683  
     — *v.* Newington Justices, 321  
     — *v.* Oliver ; Haynes, Third Party, 328  
 Howes *v.* Bishop and Wife, 213  
 Howlett *v.* Newington ; *In re* Roby, 182, 688  
 Hudson, *In re* ; Cassels *v.* Hudson, 115  
     — *v.* Rhodes, 515  
 Huggett *v.* Miers, 330  
 Hughes *v.* Chamberlain, 457  
 Hulton & Co., *Ld.*, Blyth *v.*, 251  
 Humphrey *v.* Stenbury, *In re* Viola's Lease, 134, 334  
 Hunt *v.* Acton Urban District Council, 357  
     — *v.* Baker ; *In re* Baker's Trusts, 468  
     — *v.* Green, 645  
     — *v.* Hunt, 279, 482, 530  
     — Spiers *v.*, 112  
     — *v.* Star Newspaper Co., 345  
 Hunter, *In re* ; Northey *v.* Northey, 684  
 Huntley's Jointure (the Marchioness of), *In re*, 556  
 Huntly-Gordon *v.* Huntly-Gordon, 281  
 Huttenbach & Co. and North Western Rubber Co., *In re*, 18  
 Hurley, Bellingham & Co. *v.*, 255  
     — *v.* Hurley, 278  
 Hurley's Divorce Bill, 288  
 Hyams *v.* Stuart King, 248, 460  
 Hyman *v.* Van den Bergh, 193

## I.

- Ibrahim Esmael *v.* Abdool Carrim Peer Mamode ;  
Ibrahim Esmael *v.* Abou Bakar Mamode  
Taher, 178
- Ilford Urban District Council, Torrance *v.*, 440
- Illingworth, Barker *v.*, 436
- Illustrated London News and Sketch, Ltd.,  
Lorraine *v.*, 477
- Income Tax Commissioners, R. *v.*; *Ex parte*  
University College of North Wales, 296
- Ind, Coope & Co., Normandy *v.*, 77, 81
- Indemnity Mutual Marine Assurance Co.,  
Yangtze Insurance Association *v.*, 318
- Ingersoll Sergeant Drill Co., Consolidated  
Pneumatic Tool Co. *v.*, 488
- Inglis *v.* Birmingham Corporation; *In re* Feeney,  
685
- Inland Revenue *v.* Edinburgh Magistrates, 298  
— Revenue, Ogilvie *v.*, 297  
— Revenue Commissioners *v.* Maple & Co.  
(Paris), 534  
— Revenue Commissioners, Speyer Bros. *v.*,  
537  
— Revenue Commissioners, Suffield (Lord)  
*v.*, 538
- Inman, Nash *v.*, 300
- Innes, *In re*; Barclay *v.* Innes, 687
- Institute of Chartered Accountants, The, James,  
*v.*, 63
- International Assets Co., The, *Ex parte*; *In re*  
Van Laun, 32  
— Securities Corporation, Ltd., The, *In re*,  
90  
— Securities Corporation, Ltd. (No. 2), *In re*  
609
- Irvin, In the Estate of, 677
- Irvine, North and South Wales Bank, Ltd., *v.*,  
25
- Islington Borough Council, White and Hales *v.*,  
514
- Ismay, Imrie & Co. *v.* Williamson, 379
- Ivimey *v.* Ivimey, 5, 281
- Ixer, Dawes *v.*; *In re* Barnett, 467

## J.

- J. (otherwise K.) *v.* J., 286
- J. C. and Others *v.* Widows' Fund of the Faculty  
of Procurators in Glasgow, 310
- Jackson *v.* Cooper; *Re* Eardly and Birks' Settle-  
ments, 562  
— *v.* Jackson, 287  
— (Sir John), Ltd. *v.* Owners of the Steam-  
ship "Blanche"; the Steam Hopper  
"No. 66," 7  
— and Dunsmuir, McInnes *v.*, 378
- Jacobs, *In re*; Baldwin *v.* Pescott, 97
- Jaffer and Others *v.* Williams, 102

- Jalland, Wagstaff *v.*; *In re* Wagstaff, 483, 685
- James *v.* James; *In re* James, 101
- "James Joicey, The" *v.* "The Kostrena," 590,  
597
- James, Jopson *v.*, 101, 490  
— Gunter *v.*, 447  
— *v.* The Institute of Chartered Accountants,  
63
- Jameson, *In re*; King *v.* Winn, 680
- Jayes *v.* Harris, 250
- Jefferson, R. *v.*, 153
- Jefferys, Att.-Gen. *v.*; *In re* Glukman, 218
- Jenkins *v.* Price, 341
- Jescott (Leeds), Ltd., Scriven *v.*, 477
- Jessop *v.* Clarke, 623
- Jewish Colonial Trust, Ltd., *In re*, 82
- Joel *v.* Law Union and Crown Insurance Co., 308
- "Johannesburg, The," 497
- Johnson *v.* Adamson; *Re* Fieldwick, 279  
— Att.-Gen. *v.*, 164  
— *v.* Clark, 277  
— *v.* Kearley, 620  
— O'Neill *v.*, 231, 660  
— *v.* Pickering-Norton (Claimant), 566  
— *Re*; *Ex parte* Wright, 33, 545
- Johnson's Patent, *In re*, 454, 455
- Johnston *v.* Mew, Langton & Co. 393
- Jonas *v.* Overseers of St. Dunstan-in-the-West,  
522
- Jones, *Re*, 34  
— Evans *v.*, 239  
— Goldstraw *v.*, 361  
— *v.* Great Central Ry. Co., 185  
— *v.* Jones, 220  
— *v.* Kettlewell; *In re* Kettlewell, 686  
— *v.* Pritchard, 195  
— R. *v.*, 143  
— R. *v.* (alias Spanier), 146  
— *v.* Shervington, 325
- Jones's Sewing Machine Co., Ltd., Clayton *v.*, 923
- Jopson *v.* James, 101, 490
- Jordan, Plummer *v.*; *In re* Hartley Colliery  
Accident Relief Fund, 58
- Jose *v.* Metallic Roofing Co. of Canada, Ltd., 176
- Joseph, *In re*; Pain *v.* Joseph, 689  
— Wood Green Urban District Council *v.*,  
563
- Josolyne *v.* Roberts, 126
- Joyce, R. *v.*, 153
- Judd *v.* Judd, 282
- Judgment Debtor, *In re* A; *Ex parte* The Judg-  
ment Creditors, 31

## K.

- "Kaiser Wilhelm Der Grosse, The," 596
- Karno *v.* Pathé Frères, Ltd., 117
- "Kate, The," 603



- Keam v. Justices of the Adelaide Licensing Dis-  
 trict, 170  
 Keane, Evans v., 490  
 Kearley, Johnson v., 620  
 Keating, Hennessy & Co. v., 643  
 Keen, Cheese v., 437, 613  
 Kelly v. Hopkins, 385  
 — v. Lonsdale, 236  
 Kelsey, Latchford v., 533  
 Kemp & Co., Ltd., Fitzsimmons and Duncan v., 347  
 Kempf v. Offin River Gold Estates, Ltd., 75  
 Kent Coal Concessions, Ltd., Kent County Council  
 v., 263  
 — Collieries, Ltd., Smith and Others v., 69  
 — County Council v. Kent Coal Concessions,  
 Ltd., 263  
 — v. Fittall, 208  
 — v. Fittall (No. 2), 208  
 Kenny v. Gresham Publishing Co., 650  
 Kensington Assessment Committee, Western v.,  
 513  
 Kensit, *In re*, 654  
 Kenworthy, Ltd., Bailey v., 383  
 Kerlin, Roulston v., 208  
 Kerr, Hales v., 214  
 Kerrell v. Kerrell and Terry, 284  
 Kettlewell v. Refuge Assurance Co., Ltd., 309  
 — *In re*; Jones v. Kettlewell, 686  
 Key, R. v., 133  
 Kidd, R. v., 142  
 King Stuart, Hyams v., 248, 460  
 — v. Barnett, 427  
 — v. Massey, 427  
 — v. Metropolitan District Ry. Co., 650  
 — Toronto Ry. Co. v., 479  
 — v. Turnbull, 426  
 — v. Winn; *In re* Jameson, 680  
 Kinghorn and Another, R. v., 215  
 Kingsbury Urban District Council, Middlesex  
 County Council v., 362  
 Kingston, Seal and Edgehow v., 184  
 Kirchner & Co. v. Gruban, 19, 100, 302, 404, 489  
 Kirkpatrick, R. v., 131  
 "Kirkwall, The," 592  
 Klaber and Steinberg's Letters Patent, *In re*, 456  
 Knight, R. v., 139  
 Knill, Duncan v., 16  
 Kodak, Ltd., v. Grenville, 644  
 "Koning Willem II., The," 598  
 "Kostrena, The," "The James Joicey," v., 590,  
 597  
 Kruger & Co., Ltd. v. Moel Tryvan Ship Co., 583  
 Kutner v. Addenbrooke's Hospital, 220  
 Kydd v. Liverpool Watch Committee, 358, 371,  
 487  
 — Liverpool, City of, Watch Committee v., 358  
 Kyffin v. Metropolitan Water Board, 418  
 Kyle v. Dunsdon, 671  
 Kynochs, Ltd. (No. 2), Cribb v., 381  
 — Ltd. v. R., 107  
 L.  
 L. v. L. (otherwise M.), 288  
 La Blanca and El Argentino, 569  
 Labouchere, Dakhyl v., 345  
 Lacy, *In re*; Dyson v. Speight, 223  
 Ladbroke & Co. v. Buckland, 247  
 Laidley & Co., Chippendall v., 169  
 Laing, Sir James & Co., Ltd., v. Barclay, Curle &  
 Co., Ltd., 544  
 Lamb v. Sambas Rubber and Gutta Percha Co.,  
 Ltd., 86  
 Lambert, *In re*; Corns v. Harrison, 692  
 Lambourne, Du Cros v., 132, 622  
 Lamson Store Service Co., Ltd., British Cash and  
 Parcel Conveyors, Ltd. v., 4  
 Lancashire and Yorkshire Accident Insurance  
 Co. and Etherington, *In re*, 305  
 — and Yorkshire Ry. Co., *In re*, and Earl of  
 Derby's Contract, 99  
 — and Yorkshire Ry. Co., Great Central Ry.  
 Co. v., 503  
 Landa v. Greenburg, 110, 120, 492  
 Lane, *In re*; Belli v. Lane, 467  
 Langdon v. Poyser; *In re* Poyser, 689  
 "Langfond, The" v. Canadian Forwarding and  
 Export Co., 582  
 Larkin v. Belfast Harbour Commissioners, 635  
 Larsen v. Sylvester & Co., 576  
 Laskey v. Michelmore, 210  
 — v. Runtz, 244  
 Lassells and Sharman, Ltd.; *In re* "The Free-  
 masons' Arms," 321  
 Latchford v. Kelsey, 533  
 Laughland, Southbrook Fire Clay Co., Ltd. v., 394  
 Launder v. Richards; *In re* Launder, 104, 491  
 Lavelette v. Riches & Co., 113  
 Lawford, Bruce v.; *In re* Bruce, 223  
 Lawrie v. Brown & Co., Ltd., 393, 404  
 Laws, R. v., 152  
 Lawson v. Edminson, 324  
 Lawson's Executors v. Watson, 44  
 Law Union and Crown Insurance Co., Joel v., 308  
 Lazarus v. Smith, 428, 474  
 Lea's Settlement, *In re*; Lea v. Lee, 482  
 Leber, *In re*; *Ex parte* The Trustee, 46  
 Lecouturier, Rey v., 642  
 Lee v. Baird & Co., Ltd., 384  
 — Crossley Bros., Ltd. v., 187  
 — Powell v., 112  
 — R. v., 155  
 — Lea v.; *In re* Lea's Settlement, 482  
 — Sprange v., 278  
 Lefroy, *In re*; Egmont's (Earl of) Trusts v.  
 Egmont (Earl of), 556  
 Leggatts and Carruthers, *In re*, 614

- Leicester *v.* The Company ; *In re* Yolland, Husson, and Birkett, *Ld.*, 72
- Leigh Urban District Council, Hanrahan *v.*, 36
- Leitch, Crown Steamship Co. *Ld.* *v.*, 584
- Leney & Sons, *Ld.* *v.* Callingham and Thompson, 340
- Leng, Sir W. C. & Co. (Sheffield Telegraph) *v.*, Andrews, 633
- Leonis Steamship Co. *v.* Joseph Rank, *Ld.* (No. 2), 577
- Lerwill and Pike, Howard Cundy *v.*, 633
- Leschallas *v.* Woolf, 334
- Leslie *v.* Leslie, 290
- and Wife, Cuenod, William & Co. *v.*, 230
- Letton and Sons, Hastings Corporation *v.*, 120
- Leuba Cesar, Ullmann & Co. *v.*, 645
- Levene *v.* Brougham, 300
- Levenshulme Urban District Council *v.* Manchester Corporation, 494
- Levy, *In the Estate of*, 219
- *v.* Levy and Another, 285
- Lewis, *In re* ; Davis *v.* Harrison, 695
- Bundy *v.*, 234
- Crump *v.*, 359
- *v.* Lewis, 676
- Wyler and the Ibo and Nyassa Corporation *v.*, 214
- Leycester-Penrhyn *v.* Leycester-Penrhyn ; *In re* Hare, 560
- Leyland & Co., Cain *v.*, 383
- Leyton Urban District Council, North Metropolitan Tramways Co., *Ld.*, *v.*, 649
- Lilley and Lilley and Skinner, *Ld.* *v.* London County Council, 410
- Lime *v.* Coats, 86
- Lindsay *v.* McGlashan, 386
- Lingard *v.* Squirrel ; *In re* Lingard, 561
- Lister *v.* Hooson, 39
- Little, Bastable *v.*, 624
- Liverpool, City of, Watch Committee *v.* Kydd, 358
- Corporation *v.* Assessment Committee of West Derby Union, 523
- Corporation *v.* Peter Walker and Son, *Ld.*, 321
- Watch Committee, Kydd *v.*, 358, 371, 487
- Liverpool and North Wales Steamship Co. *v.* Mersey Trading Co., *Ld.*, 607
- Lloyd Brazileiro, Workman, Clark & Co. *v.*, 474
- Edward, *Ld.*, Mangena *v.*, 346
- *v.* Pritchard, 557
- Local Government Board, *R. v.* ; *Ex parte* Hackney Borough Council, 418
- Government Board, *R. v.* ; *Ex parte* South Stoneham Union, 463
- Government Board *v.* Street, 270
- Government Board for Ireland *v.* Blackburn Union, 466
- Locke-King, *Ex parte* ; *R. v.* Justices of Surrey, 260
- Locker-Lampson *v.* The Staveley Coal and Iron Co., 422
- Lockett *v.* Withey, 14
- Lodge Holes Colliery Co. *v.* Wednesbury Corporation, 262
- and Harper, Pettitt *v.*, 46
- London and India Docks Co., *Att.-Gen. v.*, 536
- and India Docks Co. *v.* Thames Steam Tug and Lighterage Co. ; Same *v.* McDougall and Bonthron, *Ld.* ; Same *v.* Page, Son, and East, *Ld.*, 605
- and North Western Ry. Co. *v.* Ampthill Union Assessment Committee, 519
- and North Western Ry. Co. and London, Brighton and South Coast Ry. Co., Guernsey Mutual Transport Co. *v.*, 506
- and North Western Ry. Co., Pickford's, *Ld.* *v.*, 506
- and North Western Ry. Co., Rugby Portland Cement Co. *v.*, 98
- and South Western Ry. Co., Russell *v.*, 57
- Brighton and South Coast Ry. Co. and London and North Western Ry. Co., Guernsey Mutual Transport Co. *v.*, 506
- City and Midland Bank, Curtice *v.*, 25
- County Council, Broderick *v.* 380
- County Council *v.* Coal Co-operative Society, *Ld.*, 411
- County Council, Corsellis *v.*, 259, 417
- County Council, Fleming *v.*, 411
- County Council *v.* General Steam Navigation Co., *Ld.*, 663
- County Council *v.* Goode, 333
- County Council, Hewlett *v.*, 498
- County Council, Lilley and Lilley and Skinner, *Ld.* *v.*, 410
- County Council, Price's Patent Candle Co., *Ld.* *v.*, 447
- County Council *v.* Spink and Son, 410
- Corporation, Wagstaff *v.*, 199
- General Investment Trust, The, *v.* Russian Petroleum and Liquid Fuel Co., *Ld.*, 74
- General Omnibus Co., Skeat *v.*, 478
- Gigantic Wheel Co., *Ld.*, *In re*, 76
- Justices, *R. v.* ; *Ex parte* South Metropolitan Gas Co., 367
- Justices, *R. v.* ; *Ex parte* Dettmer & Co., 133
- Music Hall, *Ld.* *v.* Austin, 109
- Transport Co., *Ld.* *v.* Bessler, Waechter & Co., *Ld.*, 580
- United Tramways, *Ld.*, Acton Urban District Council *v.*, 647
- United Tramways, *Ld.*, Zick *v.*, 94

- London University Medical Sciences Institute Fund, *In re*, 59
- Long, Farmer *v.*, 415
- Lonsdale, Kelly *v.*, 236
- Lord Advocate, Buchan (Earl of) *v.*, 165
- Advocate *v.* Caledonian Ry. Co., 535
- *R. v.*, 149
- , Trustee in Bankruptcy of *v.* Great Eastern Ry. Co., 47
- Lord Clinton's Claim, *In re* National Motor Mail Coach Co., 68
- Lorraine *v.* Illustrated London News and Sketch, Ltd., 477
- Lorriman *v.* Lorriman and St. Clair, 292
- Loughborough Corporation, Morris, Herbert, and Bastert, Ltd. *v.*, 211
- Love, Crichton and Stevenson *v.*, 545
- Lovell and Christmas, Ltd. *v.* The Commissioners of Taxes, 179
- Lovett and Hipperson, R. *v.*, 151
- Lowndes, Wrigley *v.*, 469
- Lucas and Chesterfield Gas and Water Co., *In re*, 99
- Luckett *v.* Wood, 246
- Lunn, In the Estate of; Oldroyd *v.* Harvey, 676
- Lyndon, R. *v.*, 623
- M.
- M., R. *v.*, 128
- M., W. *v.*; *In re* W., 202
- MacAndrew & Co., Dothie *v.*, 398
- Macauley *v.* Great Northern, Piccadilly, and Brompton Ry. Co., 443
- Macbeth, North and South Wales Bank, Ltd. *v.*, 25
- & Co., Ltd. *v.* Maritime Insurance Co., Ltd., 317, 425, 487
- McBride *v.* Bryans, 209
- McCallum *v.* North British Ry., 441
- McCausland's Trusts, *In re*, 351
- McColl *v.* Bruce; *In re* Walker, 468
- McConnell *v.* Beatty, 176
- *v.* Brennan, 251
- McCormick *v.* Simpson & Co., 689
- McCullough *v.* Munn, 215
- Macdonald *v.* O'Toole, 482
- McCreadie, Rossland Cycle Co. *v.*, 43
- McDonald *v.* Owners of the Steamship "Banana," 388
- McDougall and Bonthron, Ltd., London and India Docks Co. *v.*, 605
- Macfadyen, *Re*; *Ex parte* Glass, 29
- P., & Co., *In re*; *Ex parte* Vizianagaram Mining Co., Ltd., 29, 35
- McGinity, Wilkins *v.*, 335
- McGlashan, Lindsay *v.*, 386
- McGlennon's Application for Registration of "Shamrock," *In re*, 640
- McGowan (Surveyor of Taxes), General Accident Fire and Life Assurance Corporation *v.*, 299
- McGrath *v.* Adelaide Licensing Justices, 170
- McHugh *v.* McHugh, 680
- McInnes *v.* Dunsmuir and Jackson, 378
- MacIntosh *v.* Dun, 346
- McIntyre, Harper *v.*, 657
- McKay, Harrogate Corporation *v.*, 670
- Mack, R. *v.*, 149
- Mackay *v.* Henderson's Transvaal Estates, Ltd., 92
- *v.* Rosie, 580
- McKenzie, Dawson *v.*, 41
- Thompson *v.*, 324
- Mackintosh-Walker *v.* Walker; *In re* Walker, 554
- McLaren, Hornby *v.*, 26
- McLaughlin, Stewart *v.*; *In re* Stewart, 217
- McLean's and Anstis' Claims; *In re* National Motor Mail Coach Co., Ltd., 88
- Macleod, Greig *v.*, 325
- Macnaghten, Scott *v.*, 112
- McNair, Cullen *v.*, 233
- McNeill, Fitz-Gibbon *v.*, 693
- McNichol *v.* Pinch, 534
- Maconchy, Aldritt *v.*, 424
- McVity *v.* Tranouth, 175
- Maddison *v.* Gill; *In re* Sharp, 681
- Mahomed Kala Mea *v.* Harperink, 180, 458
- Major *v.* Town Clerk of Shrewsbury, 207
- Major Bros. *v.* Franklin and Son, 639
- Malcolm, Brunker & Co., Ltd. *v.* Waterhouse and Sons, 10
- Mallan, Edwards *v.*, 122
- Malone *v.* Cayzer, Irvine & Co., 379
- Malvern Urban District Council, Ferguson *v.*, 660
- Manchester Corporation, Levenshulme Urban District Council *v.*, 494
- Corporation, New Moss Colliery, Ltd. *v.*, 667
- Liners, Ltd., Moore *v.*, 390
- North, Overseers of, *v.* Winstanley, 520
- and Salford Wesleyan Mission, Burns *v.*, 398, 399
- Mangena *v.* Edward Lloyd, Ltd., 346
- Manning, Anglo-American Oil Co., *v.*, 672
- Wardle & Co., Ltd., Marshall's Valve Gear Co., Ltd., *v.*, 80
- "Manor, The," 569
- Mansell *v.* Griffin, 203
- *v.* The Valley Printing Co. and Rankine, 120
- Mansfield *v.* Relf, 330, 336
- Mapey *v.* Baker, 346
- Maple & Co. (Paris), Commissioners of Inland Revenue *v.*, 534
- March, Shrager *v.*, 40

- Marchant, *In re*, 486  
 Marcus, Toppin *v.*, 134  
 Maritime Insurance Co., *Ld.*, *The v. The Alianza Insurance Co. of Santander*, 313  
     — Insurance Co., *Ld.*, Macbeth & Co., *Ld.* *v.*, 317, 425, 487  
 Mark's Patent, *In re*, 452  
 Markham *v.* Paget, 338  
 Marmor, *Ld. v. Alexander*, 77  
 "Marpessa," The Owners of the, Mersey Docks and Harbour Board *v.*, 599  
 Marreco *v. Richardson*, 349  
 Marriott *v. East Grinstead Gas and Water Co.*, 668  
 Marsden Urban District Council, Radcliffe *v.*, 262  
 Marshall *v. Ford*, 623  
     — *v. Graham*, 203  
     — *v. Marshall* (otherwise Corfield), 276  
 Marshall's Valve Gear Co., *Ld. v. Manning, Wardle & Co., Ld.*, 80  
 Marsham, *Ex parte*; *R. v. Chamberlain*, 622  
 Marten, Anderson *v.*, 318  
 Martin *v. Benjamin and Another*, 252  
     — *v. Fullerton & Co.*, 390  
     — Pyman, *v.*, 315  
     — *R. v.*, 151  
 Marylebone Borough Council, Adams *v.*, 413  
     — Borough Council, Bourne and Hollingsworth *v.*, 356  
 Mashonall Ry. Co., *Ld. v. Beira Ry. Co., Ld.*, 113  
 Mason, Tenby Corporation *v.*, 357  
 Massey, King *v.*, 427  
 Mather, Dewhurst *v.*, 397  
 "Matiana, The," 591  
 Mattinson *v. Binley*, 239  
 Maurice, *R. v.*, 145  
 Maxwell, D. & Co., Gaboriau and H. Bourguigum & Co. *v.*, 102  
 Mayne, *In re*; *Ex parte* Official Receiver, 33  
 Mears and Andrews, Andrews *v.*, 386  
 Melburn *v. Newton Colliery, Ld.*, 104, 491  
 Meltham Urban District Council, Brook, *Ld. v.*, 661  
 Mersey Docks and Harbour Board *v. Owners of "The Marpessa,"* 599  
     — Trading Co., *Ld.*, Liverpool and North Wales Steamship Co. *v.*, 607  
 Messiter-Terry, *In re*, 221  
 Metallic Roofing Co. of Canada, *Ld.*, Jose *v.*, 176  
 Metcalf and Greig, Att.-Gen. *v.*, 413  
 Merionethshire Justices, *R. v.*, 322  
 Metropolitan Asylums Board, Benson *v.*, 387  
     — Water Board, Kyffin *v.*, 418  
     — Water Board *v. Solomon*, 342  
 Mew, Langton & Co., Johnston *v.*, 393  
 Meyer, *In re*, 675  
     — *R. v.*, 151, 154  
 Michaelson, Chapman *v.*, 426  
 Michelmore, Laskey *v.*, 210  
     — Pitts *v.*, 209  
 Middlesex County Council *v. Kingsbury Urban District Council*, 362  
     — County Council, Piggott *v.*, 338, 343  
     — Justices, *R. v.*, 366  
     — Light Railways Order, *In re*, 96  
 Midhurst Rural District Council, Earl Russell *v.*, 261  
 Midland Great Western Ry. Co. of Ireland, Cooke *v.*, 442  
     — Ry. Co., Anthony *v.*, 441  
     — Ry. Co., Great Western Ry. Co. *v.*, 502, 630  
     — Ry. Co., Holywell Iron Co., *Ld. v.*, 506  
     — Ry. Co. *v. Myers, Rose & Co.*, 504  
     — Ry. Co., Williams *v.*, 56  
 Miers, Huggett *v.*, 330  
 Milburn, Cowper *v.*, 194  
 Millard and Stride, *R. v.*, 141  
 Miller and Lang, *Ld. v. Polak*, 116  
     — Dawes *v.*; *In re* Brockett, 679  
     — Deschamps *v.*, 4  
 Milne, Copland's Executors *v.*, 682  
 Mills, The Admiralty *v.*, 24  
 Milward *v. Yardley*; *In re* Yardley's Settlement, 687  
 Minty *v. Bourne*; *In re* Davidson, 60  
 Mitchell *v. Whitton*, 394  
 Moel Tryvan Ship Co., Kruger & Co., *Ld. v.*, 583  
 Monsted Otto, *Ld.*, *R. v.*, 240, 371  
 Montaldi, Elswick Steamship Co. *v.*, 582  
 Montgomerie & Co., *Ld. v. Haddington Corporation*, 551  
 Moon, *In re*; Holmes *v. Holmes*, 225  
 Moore *v. Manchester Liners, Ld.*, 390  
     — *v. Tower*, 320  
     — *v. Ullecoats Mining Co., Ld.*, 339  
     — Williams Joseph, *Ld. v.*, 118  
 Moorman *v. Tordoff*, 356  
 Moorsom-Roberts, Att.-Gen. and Croydon Rural District Council *v.*, 260  
 Moreland and Son, *Ld.*, Warneken *v.*, 394  
 Morgan, Cooper *v.*, 549  
     — *v. Elvet Colliery Co.*, 420  
     — *v. Fear*, 193  
     — *v. Russell & Co.*, 543  
     — *v. Tydvil Engineering and Ship Repairing Co.*, 395  
 Morley *v. Baumgart*, 406  
 Morrison *v. Robertson*, 544  
     — Tinsplate Co. *v. Brooker, Dore & Co.*, 19, 122  
 Morris, *Ex parte*, 131  
     — Herbert and Bastert, *Ld. v. Loughborough Corporation*, 211  
     — *v. Morris*; *In re* Morris, 224  
     — *v. Town Clerk of Shrewsbury*, 204  
     — and Others, *In re*, 615



- Mortimer, R. *v.*, 137, 151  
 Morton *v.* French, 244  
     — R. *v.*, 145  
     — Yates *v.*; *In re* Dodson, 449  
 Moses *v.* Valentine; *In re* Moses, 103  
 Moss's Empires, Ltd., Edinburgh *v.*, 347  
 Moss Empires, Ltd., and Bastow, Shaw Tom & Co. *v.*, 105  
 Muirhead, R. *v.*, 141  
 Mullen *v.* Stewart & Co., Ltd., 392  
 Mulrooney *v.* Todd and Bradford Corporation, 396  
 Munday and Another, Gadd *v.*, 478  
 Muniandy Servai, Petherpermal Chetty *v.*, 179  
 Munn, McCullough *v.*, 215  
 Munns, R. *v.*, 156  
 Munro *v.* Henderson, 679  
 Murphy *v.* Enniscorthy Guardians, 396  
 Murray *v.* Gourlay, 385  
     — *v.* Herring; *In re* Herring, 683  
     — R. *v.*, 141  
 Musammatt Surajmani *v.* Rabi Nath Ojha, 181  
 Myers, *In re*; *Ex parte* Myers, 36  
     — Rose & Co., Midland Ry. Co. *v.*, 504
- N
- Nairn *v.* University Court of University of St. Andrews, 210  
 Nascimento, Burgos *v.*, 45, 586  
 Nash, Heap *v.*, 11  
     — *v.* Inman, 300  
 National Association of Operative Plasterers, Smithies *v.*, 618, 636  
     — House Property Investment Co., Ltd. *v.* Watson, 86  
     — Motor Mail Coach Co., *In re*; Lord Clinton's Claim, 68  
     — Motor Mail Coach Co., Ltd.; Anstis' and McLean's Claims, 88  
     — Phonograph Co. *v.* Edison-Bell Consolidated Phonograph Co., Ltd., 542  
     — Starch Co.'s Application for Registration of a Trade Mark, *In re*, 641  
     — Telephone Co., Ltd., Postmaster-General *v.*, 627  
     — Telephone Co., South Eastern Ry. Co. and South Eastern and Chatham Ry. Co. Managing Committee *v.*, 628  
 Nelson Line (Liverpool), Ltd. *v.* James Nelson and Sons, Ltd., 575, 578  
 "Nettuno, The," 590  
 Neverson *v.* Seymour, 47  
 Nevill, Evans *v.*, 470  
 Newbury Rural District Council, Farquhar *v.*, 258, 259  
 New De Kaap, Ltd., *In re*, 92  
     — Druce-Portland Co., Ltd. *v.* Blakiston, 68
- New Hucknall Colliery Co., Ltd., Butterley Co., Ltd. *v.*, 422  
     — London and Suburban Omnibus Co., *In re*; Appleyard *v.* The Company, 72  
     — Mills Urban District Council, Bowden *v.*, 464  
     — Moss Colliery, Ltd. *v.* Manchester Corporation, 667  
     — River Co. and Metropolitan Water Board, Adair *v.*, 525  
     — South Wales, Commissioners of Taxation for *v.* Baxter (Att.-Gen. for Commonwealth of Australia intervening), 484  
 Newington, Howlett *v.*; *In re* Roby, 182, 688  
     — Justices, Howe *v.*, 321  
 Newport Union Assessment Committee, Green *v.*; The Same, Stead *v.*, 517  
 Newsholme *v.* Chesney, 197  
 Newton Colliery, Ltd., Melburn *v.*, 104, 491  
     — *v.* Pyke, 425  
 Nicholls, R. *v.*, 155  
 Noblett, Hindle and Palmer *v.*, 624  
 Norman *v.* Norman, 282  
 Normandy *v.* Ind, Coope & Co., Ltd., 77, 81  
 Norris, Willingdale *v.*, 415  
 North and South Wales Bank, Ltd. *v.* Macbeth; Same *v.* Irvine, 25  
     — British Ry., McCallum *v.*, 441  
     — British Ry. Co., Toal *v.*, 440  
     — Central Waggon Co., Crompton and Shawcross, Ltd. and Hindley Field Coal Co. *v.*, 108  
     — Manchester Overseers *v.* Winstanley, 520  
     — Metropolitan Tramways Co., Ltd. *v.* Leyton Urban District Council, 649  
     — Staffordshire Colliery Owners' Association *v.* North Staffordshire Ry. Co., 505  
     — Wales, *Ex parte* University College of; *v.* Commissioners of Income Tax, 296  
     — Wales, University College of, *v.* Taylor and Others, 677, 694  
     — Western Rubber Co. and Huttanbach & Co., *In re*, 18  
 Northern Milling Co., Ltd., *In re*, 91  
     — Press and Engineering Co., Ltd. *v.* Shepherd, 431  
 Northey *v.* Northey; *In re* Hunter, 684  
 Norton, Claimant; Johnson *v.* Pickering, 566  
     — Fulton *v.*, 174  
     — *v.* Norton, 486  
     — Savage *v.*, 27  
 Norton's Settlement, *In re*; Norton *v.* Norton, 490  
 Norwich Corporation and Norwich Electric Tramways Co., Ltd., *In re*, 647  
 Notaries at Melbourne, The Society of, Fay *v.*, 444

- Notary Public, *Re A*; *Ex parte* The Incorporated Society of Provincial Notaries Public, 444
- Nottinghamshire Standing Joint Committee, Story *v.*, 358
- Nugent *v.* Nugent, 527
- Nuttall, R. *v.*, 147
- O.
- Oceanic Steamship Co. *v.* Faber, 312
- O'Connell, de Vesce (Evelyn Countess) *v.*, 483, 529
- Odhams, Ltd., and Bottomley, Arnold and Butler *v.*, 184
- Oettinger *v.* Cohn, 44, 539
- Official Receiver, *Ex parte*; *In re* Mayne, 33  
— *Ex parte*; *In re* Weinburg, 34
- Offin River Gold Estates, Ltd., Kempf *v.*, 75
- Ofner, *In re*; Samuel *v.* Ofner, 680
- Ogden Cooper *v.* Oldham Election, 205  
— *v.* Ogden (*or* Philip), 285
- Ogilvie *v.* Inland Revenue, 297
- O'Keefe, Williams *v.*, 485
- Old Bushmills Distillery Co., Adair *v.*, 78
- Oldham Election, Cooper *v.* Ogden, 205
- Oldroyd *v.* Harvey; *In the Estate of* Lunn, 676
- Olive Series Publishing Co., Frost and Reed *v.*, 119
- Oliver, Howe *v.*; Haynes, Third Party, 328  
— Wormald *v.*; Wormald's Settled Estate, *In re*, 555  
— *In re*; Wilson *v.* Oliver, 695
- One and All Sickness and Accident Insurance Association, *In re*; Rossington *v.* Trathen, 244
- Ontario, Att-Gen. for, Woodruff *v.*; Att-Gen. for Ontario *v.* Alfred S. Woodruff, 175
- O'Neill *v.* Johnson, 231, 660
- Oppenheimer *v.* Attenborough and Son, 10
- "Oravia, The," 591
- Orchis Steamship Co., Ltd., Thorley Joseph and Sons, Ltd. *v.*, 584
- Orient Steam Navigation Co., The, Smitton *v.*, 55
- Orlebar, *In re*; Wynter *v.* Orlebar, 162
- Orrell Colliery Co., Ltd., Schofield *v.*, 385
- Orris, R. *v.*, 141
- Osborne *v.* The Amalgamated Society of Railway Servants, 636  
— R. *v.*, 150
- O'Sullivan, Rushbrooke *v.*, 617
- O'Toole, Macdonald *v.*, 482
- Owen, Alliance Credit Bank of London *v.*, 166  
— Assheton Smith *v.*, 606  
— Dunning *v.*, 323  
— *v.* Faversham Corporation, 446  
— R. *v.*, 14, 372
- P.
- Packham, Brighton Corporation *v.*, 664
- Page *v.* Burtwell, 380  
— Son and East, Ltd., London and India Docks Co. *v.*, 605
- Paget, Markham *v.*, 338
- Pain *v.* Joseph; *In re* Joseph, 689
- Painter Stainers' Co., Waring *v.*; *In re* Barnett, 60
- Palace Shipping Co. *v.* Caine, 572  
— *v.* Spillers and Bakers, Ltd., 586
- Palmer *v.* Bateman, 443  
— Whitehead *v.*, 224
- Pandit Gaya Parshad Tewari *v.* Sardar Bhagat Singh, 374
- Panter, Wedge *v.*; *Re* Wedge, 491
- Parker *v.* Dent; *In re* Dent's Settlement Trusts, 656  
— Slater *v.*, 279
- Parkes *v.* Royal Botanic Society of London, 653
- Parkin *v.* South Hetton Coal Co., 405
- Parsons, Armitage *v.*, 328
- Partington, *In re*; Sewell *v.* Rogers, 531
- Partridge, Jones & Co., Coldrick *v.*, 402.
- Pathé Frères, Ltd., Karno *v.*, 117
- Paul *v.* Hargreaves, 671
- Pawsey, Alfred & Co., Scottish Union and National Fire Insurance Co. *v.*, 480
- Paynter, R. *v.*, 139
- Peak Hill Goldfields, Ltd., *Ex parte*; *In re* S., 34  
— Barclay & Co., Ltd., Garnishees, Scott *v.*, 39
- Pearce *v.* Bullard, King & Co., 36
- Pears *v.* Bergel; *In re* Bergel and Joseph, 32
- Pearse's Settlement, *In re*, 556
- Pearson, C. Arthur, Ltd., De la Bere *v.*, 106
- Pearson *v.* Dublin Corporation, 51, 496  
— (No. 1), R. *v.*, 130, 138  
— (No. 2), R. *v.*, 142
- Peckover *v.* Defries, 323
- Pembroke Election Petition (No. 2), *In re*, 158, 205, 206
- Peninsular and Oriental Steam Navigation Co., Hamel and Horley *v.*, 314
- Penn *v.* Spiers and Pond, Ltd., 382
- Pennington *v.* Pincock, 323
- Perkins, Brown *v.*; *In re* Perkins, 530  
— County of London Electric Supply Co. *v.*, 412
- Perrin and Burst, R. *v.*, 130
- Perry *v.* Wright, 383
- Persse, Ltd., Fitzgerald *v.*, 74
- Peruvian Corporation, Ltd., Cox Moore *v.*, 71
- Peters, R. *v.*, 147
- Pethepermal Chetty' *v.* Muniandy Servai, 179
- Petitioning Creditor, *Ex parte*; *In re* A Debtor, 30

- Pettitt *v.* Bell, 104, 491  
     — *v.* Lodge and Harper, 46  
 Philippart *v.* William Whiteley, *Ld.*; *In re*  
     Philipparts' Trade Mark, 641  
 Phillips, Clifford *v.*, 450  
     — *v.* Swain; *In re* Swain, 694  
     — Woodward *v.*; *In re* Everard, 678  
     — & Co., Great Western Ry. Co. *v.*, 503  
 Pickering, Furness, Withy & Co., *Ld.*, *v.*, 477  
     — Johnson *v.*; Norton, Claimant, 566  
     — *v.* Willoughby, 135  
 Pickett, Whitehouse *v.*, 303  
 Pickford's, *Ld. v.* London and North Western Ry.  
     Co., 506  
 Pigeon *v.* Calgary and Medicine Hat Land Co.,  
     *Ld.*, *In re*, 70  
 Piggott *v.* Middlesex County Council, 338, 343  
 Pike and Lerwill, Cundy *v.*, 633  
 Pinch, McNichol *v.*, 534  
 Pincock, Pennington *v.*, 323  
 Pitts *v.* Michelmores, 209  
 Plowden, *In re*; Plowden *v.* Plowden, 681  
 Plummer *v.* Jordan; *In re* Hartley Colliery  
     Accident Relief Fund, 58  
 Plumpton *v.* Burkinshaw, 365  
 Plymouth Corporation, Att.-Gen. *v.*, 360  
     — Guardians *v.* Poplar Guardians, 465  
 Poë *v.* Spencer Cooper; *In re* Spencer Cooper,  
     161, 696  
 Polak, Miller and Lang, *Ld. v.*, 116  
 Pollard, White *v.*, 549  
 Poltimore *v.* Quicke; *In re* Quicke, 307  
 Polushie, Zacklinsky *v.*, 173  
 Ponsolle *v.* Webber, 619  
 Pontypridd Waterworks Co., Att.-Gen. and  
     Rhondda Urban District Council *v.*, 475  
     — Union Assessment Committee, Rhondda  
     Valley Breweries Co. *v.*, 371, 516  
 Pocle, Barclay & Co., *Ld. v.*, 571  
     — Hapelman *v.*, 389  
 Pope, *In re*; *Ex parte* Dicksee, 40  
 Poplar Guardians, Plymouth Guardians *v.*, 465  
 Popular Life Assurance Co., *In re*, and *In re*  
     United Provident Assurance Co., 311  
 Porter *v.* Bowerman; *In re* Bowerman, 162  
 Porton *v.* The Central (Unemployed) Body for  
     London, 399  
 Portsmouth and District Vacuum Cleaner Co.,  
     *In re*, 84  
     — Corporation *v.* Hall, 271  
 Post, Prudhoe *v.*, 302  
 Postmaster-General *v.* National Telephone Co.,  
     *Ld.*, 627  
     — and Watford Urban District Council, *In*  
     *re*, 628  
     — and Woolwich Borough Council, *In re*, 628  
 Poulton *v.* Adjustable Cover and Boiler Block Co.,  
     *Ld.*, 328, 455  
 Powell *v.* Browne, 436  
     — *v.* Lee, 112  
 Poyser, *In re*; Langden *v.* Poyser, 689  
 Practice Note, 366, 392  
 Pratt, Quinn *v.*, 373  
 Premier Industrial Bank, *Ld. v.* J. and W.  
     Crabtree, *Ld.*, 43  
 Preston, Baldwin *v.*; *In re* Jacobs, 97  
     — Bonnell *v.*, 474  
 Pretoria-Pietersburg Ry. Co., *Ld. v.* Elgood, 296  
 Prévost *v.* Prévost, 173  
 Price, Att.-Gen. *v.*, 200  
     — Jenkins *v.*, 341  
 Price's Patent Candle Co., *Ld. v.* London County  
     Council, 447  
 Prichard *v.* Coulson; *In re* Coulson's Trusts, 652  
     — Lloyd *v.*, 557  
 "Prince Leopold de Belgique, The," 598  
 Prior, *In re*; *In re* Terrill, 444  
 Pritchard, Jones *v.*, 195  
 Proctor *v.* Atkinson; *In re* Atkinson, 434  
 Procurators', Faculty of, in Glasgow, Widows  
     Fund of the, Colquhoun *v.*, 310  
 Prosser, Smith *v.*, 44  
 Prudhoe *v.* Post, 302  
 Purcell, Haigh *v.*, 475  
     — Lord Fitzhardinge *v.*, 665  
 Pyke, Newton *v.*, 425  
 Pyman *v.* Martin, 315  
  

Q.

 Quebec Bridge and Ry. Co., Quebec Improve-  
     ment Co. *v.*, 176  
     — Improvement Co. *v.* Quebec Bridge and  
     Ry. Co. 176  
 Queen's County Justices, *R. v.*, 261  
 Queens of the River Steamship Co. *v.* Conservators  
     of the River Thames and Easton Gibb  
     and Son, 663  
 Quest, Conner *v.*, 631  
     — Bingley *v.*, 14  
 Quicke, *In re*; Poltimore *v.* Quicke, 307  
 Quin *v.* Elvet Colliery Co., 420  
     — and Axtens, *Ld.*; Salmon *v.*, 80  
 Quinlan, *R. v.*, 207  
 Quinn *v.* Pratt, 373  
  

R.

 R. *v.* Atkins, 151  
     — *v.* Audley, 136  
     — *v.* Austin and Others, 203  
     — *v.* Baines, 130  
     — *v.* Baker, 146  
     — *v.* Bartholomew, 266  
     — *v.* Bath County Court Judge, 265, 322  
     — *v.* Bayley, 135

- R. v. Belfast Guardians, 463
- *v.* Bennett, 368
  - *v.* Benson, 130
  - *v.* Bermondsey Borough Council, 158
  - *v.* Bermondsey Borough Council : *Ex parte* Bermondsey Guardians, 465, 515
  - *v.* Bond, 129
  - *v.* Boulter, 134
  - *v.* Bradford, 158, 261
  - *v.* Bradford-on-Avon Rural District Council, 362
  - *v.* Briggs, 134
  - *v.* Brixton Prison Governor ; *Ex parte* Calberla, 226
  - *v.* Brixton Prison Governor ; *Ex parte* Auvera, 227
  - *v.* Brixton Prison Governor ; *Ex parte* Percival, 227
  - *v.* Brown, 157
  - *v.* Burke, 143
  - *v.* Butcher, 643
  - *v.* Carson-Roberts, 354
  - *v.* Chiswick Urban District Council, 360
  - City of Dublin Steam Packet Co. *v.*, 108
  - *v.* Coleman, 153
  - *v.* Connor, 136
  - *v.* Cooper, 140
  - *v.* Crawley, 146
  - *v.* Crossman ; *Ex parte* Chetwynd, 369
  - *v.* Daye, 215
  - *v.* De Marney, 144
  - De Peyer, *v.*, 298
  - *v.* Delvin Union, 366
  - *v.* Dibble, 129
  - *v.* Dunleavey, 156
  - *v.* Dyson, 142, 155
  - *v.* Elliott, 130, 133
  - *v.* Fairbrother, 143
  - *v.* Finch, 138
  - *v.* Fletcher, 621
  - *v.* Fox ; *Ex parte* Plympton St. Mary Rural District Council, 362
  - *v.* George, 131, 148
  - *v.* Great Northern Railway, 488
  - *v.* Greenaway, 139
  - *v.* Gyde, 132
  - *v.* Gyle, 156
  - *v.* Hamilton, 144, 149, 274
  - *v.* Hampshire, 150
  - *v.* Harding, 143
  - *v.* Hawes, 144
  - *v.* Income Tax Special Commissioners ; *Ex parte* University College of North Wales, 296
  - *v.* Jefferson, 153
  - *v.* Jones, 143
  - *v.* Jones (*alias* Spanier), 146
- R. v. Joyce, 153
- *v.* Key, 133
  - *v.* Kidd, 142
  - *v.* Kinghorn and Another, 215
  - *v.* Kirkpatrick, 131
  - *v.* Knight, 139
  - Kynoch, *Ld. v.*, 107
  - *v.* Laws, 152
  - *v.* Lee, 155
  - *v.* Local Government Board ; *Ex parte* Hackney Borough Council, 418
  - *v.* Local Government Board ; *Ex parte* South Stoneham Union, 463
  - *v.* London Justices ; *Ex parte* Dettmer & Co., 133
  - *v.* London Justices ; *Ex parte* South Metropolitan Gas Co., 367
  - *v.* Lord, 149
  - *v.* Lovett and Hipperson, 151
  - *v.* Lyndon, 623
  - *v.* M., 128
  - *v.* Mack, 149
  - *v.* Marsham ; *Ex parte* Chamberlain, 622
  - *v.* Martin, 151
  - *v.* Maurice, 145
  - *v.* Merionethshire Justices, 322
  - *v.* Meyer, 151, 154
  - *v.* Middlesex Justices, 367
  - *v.* Monsted Otto, *Ld.*, 240, 371
  - *v.* Mortimer, 137, 151
  - *v.* Morton, 145
  - *v.* Muirhead, 141
  - *v.* Munns, 156
  - *v.* Murray, 141
  - *v.* Nicholls, 155
  - *v.* Nuttall, 147
  - *v.* Orris, 141
  - *v.* Osborne, 150
  - *v.* Owen, 14, 372
  - *v.* Paynter, 139
  - *v.* Pearson (No. 1), 130, 138
  - *v.* Pearson (No. 2), 142
  - *v.* Perrin and Burst, 130
  - *v.* Peters, 147
  - *v.* Queen's County Justices, 261
  - *v.* Quinlan, 207
  - *v.* Rutter, 131, 145
  - *v.* Selfe and Hayward, 124
  - *v.* Sheehan, 128
  - *v.* Shuttleworth ; *Ex parte* Tickle, 509
  - *v.* Sidlow, 147
  - *v.* Sockett, 135
  - *v.* Southampton Justices ; *Ex parte* Lebern, 368
  - *v.* Southwark Borough Council ; *Ex parte* South Eastern and Chatham Ry. Co.'s Committee, 512
  - *v.* Sovoski, 154, 156



- R. v. Stone; *Ex parte* Seton, 250  
 — v. Stride and Millard, 140, 141  
 — v. Surrey Justices; *Ex parte* Locke-King, 260  
 — v. Syres, 132, 148  
 — v. Tate, 128  
 — v. Tabrum, 370  
 — v. Taylor, 228  
 — v. Townson, 198  
 — v. Tyrone Justices, 369  
 — v. Walkem, 485  
 — v. Wall, 136  
 — v. Warner, 156  
 — v. Weaver, 147  
 — v. West Riding Justices, 516  
 — v. Westacott, 150  
 — v. Whitley, 142  
 — v. Wilbraham, 625  
 — v. Wilkins and Others, 369  
 — v. Williamson, 149  
 — Winans v., 161  
 — v. Winkworth, 149  
 — v. Woodcock, 373  
 — v. Wright, *Ex parte* Bradford Corporation, 371  
 Rabey v. Birch, 215, 478  
 Rabi Nath Ojha, Musammat Surajmani v., 181  
 Radcliffe v. Marsden Urban District Council, 262  
 Raeburn, Darling and Sons v., 580  
 Rahtken's Shipping Co., Ltd., Whittall & Co. v., 580  
 Raja Pramada Nath Roy v. Raja Ramani Kanta Roy, 180  
 Raja Rai Bhagwat Dayal Singh v. Debi Dayal Sahu, 180  
 Ramsden v. Conyngham; *In re* Conyngham (Marchioness), 684  
 Rank, Joseph, Ltd., (No. 2), Leonis Steamship Co. v., 577  
 Rankine and Valley Printing Co., Mansell v., 120  
 Rapid Road Transit Co., *In re*, 615  
 Rashleigh, Tremayne v., 558  
 Rayner, *In re*, 221  
 Reacher, Elliston v., 547  
 "Reading, The," 7  
 Rebow, Cohen v., 29  
 Receiver for the Metropolitan Police District, Field v., 135  
 "Red Cross, The," 596  
 Red "R" Steamship Co. v. Allatini Bros., 581  
 Reed v. Great Western Ry. Co., 388  
 Reed and Frost v. Olive Series Publishing Co., 119  
 Rees v. Davies, 237  
 — v. Rees, 292  
 Reeves v. Grainger, 676  
 R. E. F., *In re*, 614  
 Refuge Assurance Co., Ltd., Kettlewell v., 309  
 "Reginald, The," 595  
 Registrar of Titles, Spencer, v., 171  
 Reid, Rennie, v., 397  
 Reid-Newfoundland Co., Shea v., 178  
 Reigate Rural District Council v. Sutton District Water Co.; Ewart, Third Party, 265  
 Reindeer Steamship Co. v. Forslind and Son, 582  
 Relf, Mansfield v., 330, 336  
 Rendall v. Darby; *In re* Darby, 432, 697  
 Rennie v. Reid, 397  
 Renshaw & Co., Ltd., *In re*, 71  
 Renton, Stott v., 250  
 Republic of Bolivia v. The Indemnity Mutual Marine Assurance Co., Ltd., 318  
 Reversionary and General Securities Co. v. Hall; *In re* Beard; Beard v. Hall, 694  
 Rey v. Lecouturier, 642  
 Rexer Arms Co. and Snell, Dansk Rekyrliffel Syndicat Aktieselskab v., 28, 454, 489  
 Rhodes, Hudson v., 515  
 — v. Soothill Wood Colliery Co., Ltd., 385  
 Rhondda Urban District Council v. Taff Vale Ry. Co., 267, 646  
 — Urban District Council and Att.-Gen. v. Pontypridd Waterworks Co., 475  
 — Valley Breweries Co. v. Pontypridd Union Assessment Committee, 371, 516  
 Richards, Launder v.; *In re* Launder, 104, 491  
 Richardson v. Graham, 194  
 — Marreco v., 349  
 Riches & Co., Lavelette v., 113  
 Richmond v. Crown Fire Lighter Co., 483  
 — Duke of (No. 1), Att.-Gen. v., 164  
 Rickards v. Bartram, 634  
 — Sharp v., 435  
 Riddle & Co., Hooper v., 644  
 — Gillespie v., 551  
 Rieken v. Yorke Peninsula Licensing Justices; Kearn v. Adelaide Licensing Justices, 170  
 Rintoul v. Dalmeny Oil Co., Ltd., 386  
 Rivers v. Waidanis; *In re* Waidanis, 653  
 "Roanoke, The," 598  
 Roberts, Barnard v., 231  
 — Carson, R. v., 354  
 — Hincks v.; *In re* Croydon, 351  
 — Josolyne v., 126  
 Robertson v. Allan Brothers & Co., 389  
 — Grand Trunk Ry. Co. of Canada v., 327  
 — Morrison v., 544  
 Robins, Townshend (Lord) v.; *In re* Townshend's Settlements, 364  
 Robinson, Challoner v., 188  
 — v. Smith, 198  
 Robson v. Biggar, 187, 483  
 Roby, *In re*; Howlett v. Newton, 182, 688  
 Rochdale Corporation, Hartley v., 666  
 Roehling Bros., Horsley Line, Ltd. v., 577, 588  
 Roehrich, Whaley v.; *In re* Whaley, 525

- Rogers, Sewell *v.*; *In re* Partington, 531  
 Rohmann *v.* Rohmann, 275  
 Rolt *v.* Burdett; *In re* Rolt, 467  
 Ronald, *Ex parte*; *In re* Comar, 35, 248  
 Rook, Folkestone Corporation *v.*, 269  
 Rorie *v.* Stevenson, 616  
 Rosie, Mackay *v.*, 380  
 Rosengvist *v.* Bowring & Co., Ltd., 382  
 Ross, Att.-Gen. *v.*, 538  
     — *v.* Ross, 281  
 Rossland Cycle Co. *v.* McCreadie, 43  
 Roulston *v.* Kerlin, 208  
 Roussel *v.* Burnham, 88  
 Routledge, *In re*; Routledge *v.* Saul, 655  
 Rowe *v.* Gough, 326  
 Rowland *v.* Wright, 387  
 Royal Botanic Society of London, Parkes *v.*, 653  
     — College of Veterinary Surgeons *v.* Collinson, 407  
     — Mail Steam Packet Co., Baxter's Leather Co., Ltd. *v.* 585  
     — Warrant Holders' Association *v.* Slade & Co., Ltd., 645  
 Royle *v.* Royle, 294  
 Rugby Portland Cement Co. *v.* London and "North Western Ry. Co., 98  
 Runtz, Laskey *v.*, 244  
 Rushbrook *v.* Grimsby Palace Theatre, etc., 401  
 Rushbrooke *v.* O'Sullivan, 617  
 Rushworth, *In the Goods of*, 218  
 Russell *v.* London and South Western Ry. Co., 57  
     — (Earl) *v.* Midhurst Rural District Council, 261  
     — *v.* Stubbs, Ltd., 461  
     — Toronto Corporation *v.*, 176  
     — & Co., Morgan *v.*, 543  
 Rutherford, Cozens *v.*, 397  
 Rutter, *In re*; Donaldson *v.* Rutter, 275  
     — *R. v.*, 131, 145  
 Ryley, Waterhouse *v.*; *In re* Waterhouse, 467  
 Russian Petroleum and Liquid Fuel Co., Ltd., London General Investment Trust, Ltd., *v.*, 74
- S.
- S. v. S.* (otherwise M.), 286  
*S.*, *In re*; *Ex parte* Peak Hill Goldfield, Ltd., 31  
 St. Andrews, University Court of University of, Nairn *v.*, 210  
 St. Clair and Lorrimer, Lorrimer *v.*, 292  
 St. Dunstan-in-the-West, Overseers of, Jonas *v.*, 522  
 St. George's, Hanover Square, Rector of, Westminster Corporation *v.*, 53  
 St. Ives Corporation *v.* Wadsworth, 258  
 St. Mark's, Wimbledon, *In re*, 197  
 St. Mary's Convalescent Home, Clarke *v.*; *In re* Clarke, 489  
 St. Michael, Bromley, 197  
 St. Olave's Trustees, Hays Wharf, Ltd. *v.*, 524  
 "St. Paul, The," 597  
 St. Thomas' Hospital, Governors of, *Ex parte*; *In re* Defence Acts, 525  
 Sadd *v.* Griffin, 612  
 Sadler, Sanders *v.*, 236  
 Salaman, *In re*; De Pass *v.* Sonnenthal, 690  
 Salmon *v.* Quin and Axtens, Ltd., 80  
 Salt & Co., *In re*, 92  
 Sambas Rubber and Gutta Percha Co., Ltd., Lamb *v.*, 86  
 Samuel Brothers, Ltd. *v.* Whetherly, 540  
     — *v.* Ofner; *In re* Ofner, 680  
 Sanders *v.* Sadler, 236  
 Sardar Bhagat Singh, Pandit Gaya Parshad Tewari *v.*, 374  
 Sarpy *v.* Holland, 119  
 Saul, Routledge *v.*; *In re* Routledge, 655  
 Saunders, T. H., & Co., Ltd., *In re*, 85  
 Savage *v.* Norton, 27  
 Sayer, Crosbie-Hill *v.*, 433  
 Saxby *v.* Fulton, 249  
 Scarisbrick, Talbot *v.*, 561  
 "Scarsdale, The," Board of Trade *v.* Baxter, 573  
 Schenk *v.* Schenk, 289  
 Schofield *v.* Orrell Colliery Co., Ltd., 385  
 Schwabacher, *Re*; Stern *v.* Schwabacher, 620  
 "Schwan, The," 585  
 Scott *v.* Macnaghten, 112  
     — *v.* Peak Hill Goldfields, Ltd.; Barclay & Co., Ltd., Garnishees, 39  
 Scott-Robson, Yuill & Co. *v.*, 312, 542  
 Scottish Temperance Life Insurance Co., Black *v.*, 194  
     — Union and National Fire Assurance Co. *v.* Alfred Pawsey & Co., 480  
 Scriven *v.* Jescott (Leeds), Ltd., 477  
 "Sea Spray, The," 608  
 Seabrook Brothers, Cohen *v.*, 381  
 Seal and Edgelow *v.* Kingston, 184  
 Searle, Higgins *v.*, 265  
 Secretary of State for the War Department, *Ex parte*; *In re* Defence Acts, 525  
 Seed *v.* Elvet Colliery Co., 420  
 Seisdon Union, Davies *v.*, 520  
 Selve (Judge) and Hayward, R. *v.*, 124  
 Selkirk *v.* Ferguson, 166  
 Sewell *v.* Rogers; *In re* Partington, 531  
 Seymour, Neverson *v.*, 47  
 Sharp, *In re*; Maddison *v.* Gill, 681  
     — *v.* Rickards, 435  
     — *v.* Skues, 347  
 Sharpe (otherwise Morgan) *v.* Sharpe, 291  
 Shaw *v.* Cates, 656  
     — , Tom & Co. *v.* Moss Empires, Ltd., and Bastow, 105  
 Shea *v.* Reid-Newfoundland Co., 178

- Sheehan, R. v., 128  
 Sheffield Union Assessment Committee, Great Central Ry. Co. v., 519  
 Shepherd, Addison v., 188  
   — Northern Press and Engineering Co., Ltd. v., 431  
 Shepton Mallet Rural District Council v. John Wainwright & Co., 263  
 Shervington, Jones v., 325  
 Shilton v. Freeman; *In re* Freeman, 61  
 Shrager v. March, 40  
 Shrewsbury, Town Clerk of, Major v., 207  
   — Morris v., 204  
 Shoolbred, James & Co. v. Wyndham and Albery, 107  
 Shuttleworth, R. v.; *Ex parte* Tickle, 509  
 Sidlow, R. v., 147  
 Sidney, *In re*; Hingeston v. Sidney, 61  
 Simmons' Contracts, *In re*, 549, 615  
 Simon, *In re*, 278  
 Simpson, Hodgkins v., 247  
   — v. South Oxfordshire Water and Gas Co., 670  
   — & Co., McCormick v., 689  
 Silverthorne, Guillelmard v., 338  
 Skeat v. London General Omnibus Co., 478  
 Skinner v. Uzielli & Co., Ltd., 19  
 Skirrow, Dibden v., 230  
 Skues, Sharp v., 347  
 Slade v. Chainé, 656  
   — & Co., Ltd., Royal Warrant Holders' Association v., 645  
 Slater v. Parker, 279  
 Smackman v. General Steam Navigation Co., 586  
 Smethurst, Chapman v., 44  
 Smith, Aberdeen Master Masons' Incorporation v., 245  
   — Assheton v. Owen, 606  
   — v. Atkins; *In re* Atkins, 476  
   — Bray v., 80  
   — v. Grummit; *In re* Gedney, 222  
   — Lazarus v., 428, 474  
   — v. Prosser, 44  
   — Robinson v., 198  
   — (Woodham) v. Edwards, Haslam & Co., Garnishees, 481  
   — and Others v. Kent Collieries, Ltd., 69  
   — (W. H.) and Son v. Clinton, 112, 492  
 Smith's Dock Co. v. Tynemouth Corporation, 372, 510  
 Smithies v. National Association of Operative Plasterers, 618, 636  
 Smitton v. The Orient Steam Navigation Co., Ltd., 55  
 Snell, Baker v., 15  
   — and Rexer Arms Co., Dansk Rekylriffel Syndicat Aktiesselskab v., 28, 454, 489  
 Sockett, R. v., 135  
 Solicitors, *In re* Two, 616  
 Solomon, Metropolitan Water Board v., 342  
   — v. Catchpole; *In re* Adkins, 684  
 Sonnenthal, De Pass v.; *In re* Salaman, 690  
 Soothill Wood Colliery Co., Ltd., Rhodes v., 385  
 South Eastern Ry. Co. and South Eastern and Chatham Ry. Co.'s Managing Committee v. National Telephone Co., 628  
   — Hetton Coal Co., Parkin v., 405  
   — Metropolitan Gas Co., *Ex parte*; R. v. Justices of London, 367  
   — Oxfordshire Water and Gas Co., Simpson v., 670  
   — Stoneham Union, *Ex parte*; R. v. Local Government Board, 463  
 Southam, Butler v.; *In re* Brewster, 163  
 Southampton Justices, R. v.; *Ex parte* Lebern, 368  
 Southhook Fire Clay Co., Ltd. v. Laughland, 394  
 Southwark Borough Council, R. v.; *Ex parte* South Eastern and Chatham Ry. Co.'s Committee, 512  
   — Borough Council, Walsh v., 497  
   — Corporation, Borwick v., 520  
 Southwell, Wilmott v., 625  
 Sovoski, R. v., 154, 156  
 Spackman, Hargreaves v., 237  
 Speight, Dyson v.; *In re* Lacy, 223  
 Spence, Dickens v., 19  
   — v. Doodeward, 182  
 Spencer v. Registrar of Titles, 171  
 Spencer-Cooper, *In re*; Poë v. Spencer-Cooper, 161, 696  
 Speyer Bros. v. Commissioners of Inland Revenue, 537  
 Spicer v. Hillingden, 69  
 Spiers v. Hunt, 112  
   — and Pond, Ltd., Penn v., 382  
 Spillers and Bakers, Ltd., Palace Shipping Co. v., 586  
 Spink and Son, London County Council v., 410  
 Spooner v. Godfrey, 106  
 Sprange v. Lee, 278  
 Spurling, *In re*, 365  
 Squirrel, Lingard v.; *In re* Lingard, 561  
 Stainer Manufacturing Co., The, Hitchcock v., 478  
 Standard Bank of South Africa, Ltd. v. Heydenrych, 171  
 Stanfords, Whitmores (Edenbridge), Ltd. v., 192  
 Stanley, Gramophone and Typewriters, Ltd. v., 297  
 Staples v. Young, 422  
 Star Newspaper Co., Hunt v., 345  
   — Newspaper Co., Williams v., 215  
 Starkey v. Barton, 548, 617

- Star Omnibus Co. *v.* Tagg, 625
- Staveley Coal and Iron Co., Locker-Lampson *v.* 422
- Stead *v.* Newport Union Assessment Committee, 517
- Steamship "Banana," Owners of, McDonald *v.*, 388
- "Blanche," Owners of, Sir John Jackson, *Ld. v.* The Steam Hopper No. 66, 7
- "Knutsford," *Ld. v.* Tillmanns & Co., 574
- Steiner & Co., Stones *v.*, 403
- Stenbury, Humphrey *v.*; *In re* Viola's Lease, 134, 334
- Stephan *v.* Board of Executors of Cape Town, 485
- Stephens and Sons, Greenshields, Cowie & Co. *v.*, 314
- Stepney Union Assessment Committee, Horner *v.*, 372, 512
- Borough Council, Gingell, Son and Foskett, *Ld. v.*, 376
- Stern *v.* Schwabacher; *In re* Schwabacher, 620
- Stevens, Wilson *v.*, 491
- Stevenson, Rorie *v.*, 616
- *v.* Glasgow Corporation, 440
- Stewart, *In re*; Stewart *v.* McLaughlin, 217
- *v.* Conservators of the River Thames, 295, 618
- & Co., *Ld.*, Mullen *v.*, 392
- Stirling, *In re*; Stirling *v.* Stirling, 276
- Stone, R. *v.*; *Ex parte* Seton, 250
- Bridgwater Corporation *v.*, 268
- Stones *v.* Steiner & Co., 403
- Story *v.* Nottinghamshire Standing Joint Committee, 358
- Stott *v.* Renton, 250
- Stourbridge Urban District Council *v.* Butler and Grove, 270
- Street, Local Government Board *v.*, 270
- Strickland *v.* Strickland, 177
- Stride and Millard, R. *v.*, 140, 141
- Stubbs, *Ld.*, Russell *v.*, 461
- Stutchbury's, *Ld.*, Bluett *v.*, 78
- "Suevic, The," 13, 602
- Suffield, Lord *v.* Commissioners of Inland Revenue, 538
- Suleman, Somji, Bank of Bombay *v.*, 121, 222, 431, 697
- Sullivan *v.* Gurney; *In re* Gurney's Settlement, 555
- Summers, White *v.*, 699
- Sunderland Union Assessment Committee, Waddle *v.*, 517
- Surrey Justices, R. *v.*; *Ex parte* Locke-King, 260
- Vaudeville Theatre, Atkinson *v.*, 401
- Sutton District Water Co., Ewart, Third Party, Croydon Rural District Council *v.*, 109
- District Water Co., Reigate Rural District Council *v.*; Ewart Third Party, 265
- Swaagman *v.* Swaagman, 100
- Swain, *In re*; Phillips *v.* Swain, 694
- Swansea Harbour Trustees, Swansea Union Assessment Committee *v.*, 522
- Union Assessment Committee *v.* Swansea Harbour Trustees, 522
- Sweetman *v.* Butler, 558
- Sydney Municipal Council *v.* Cook, 5
- Sylvester & Co., Larsen *v.*, 576
- Symon, Emanuel *v.*, 103
- Syres, R. *v.*, 132, 148
- T.
- T. *v.* T. (otherwise T.), the King's Proctor showing cause, 287
- Taber *Ex parte*; *In re* Weighell, 34
- Tabrum, R. *v.*, 370
- "Tactician, The," 604
- Taff Vale Ry. Co. *v.* Cardiff Union Assessment Committee, 517
- Vale Ry. Co., Rhondda Urban District Council *v.*, 267, 646
- Tagg, Star Omnibus Co. *v.*, 625
- Talbot *v.* Blindell, 339
- *v.* Scarisbrick, 561
- Taneborne, Welton *v.*, 622
- Tannenbaum & Co. *v.* Heath, 185, 306
- Tarry, Cavendish *v.*, 633
- Tasker & Co. *v.* Allen Bros. & Co. ("The Hibernian"), 587
- Tate *v.* Fullbrook, 117
- Tuffley, *v.*, 646
- R. *v.*, 128
- Taxes, Commissioners of, Lovell and Christmas, *Ld.*, *v.*, 179
- Taylor, Cowley *v.*; Ackers and Others, Garnishees, 125
- *In re*; *Ex parte* Bolton, 38
- R. *v.*, 228
- University College of North Wales and University of Wales *v.*, 677, 694
- *v.* University of Wales; *In re* Williams, 694
- Tenby Corporation *v.* Mason, 357
- Terrill, *In re*; *In re* Prior, 444
- Terry and Kerrell, Kerrell *v.*, 284
- Thames Conservators, Stewart *v.*, 295, 618
- Steam Tug and Lighterage Co., London and India Docks Co. *v.*, 605
- Tunnel (Rotherhithe and Ratcliff) Act, 1900, *In re*, 96
- Thomas *v.* Dey, 249
- *v.* Thomas; *In re* Evans, 531, 699
- West Ham Corporation *v.*, 271
- Williamson *v.*, 190
- Thompson, Banister *v.*, 196, 276
- *v.* Goold, R. W. & Co., 384



- Thompson *v.* McKenzie, 324  
 — *v.* Watkins; *In re* Thompson, 530  
 — and Callingham, Leney and Sons, Ltd.  
*v.*, 340
- Thomson *v.* Henderson's Transvaal Estates, Ltd.,  
 92
- Thorley, Joseph, and Sons, Ltd. *v.* Orchis Steam-  
 ship Co. Ltd., 584
- Thorpe *v.* Davies, 420
- Tickle, *Ex parte*; *R. v.* Shuttleworth, 509
- Tillmanns & Co., Steamship "Knutsford," Ltd.  
*v.* 574
- Tilonko *v.* Att.-Gen. of Natal, 485, 540
- Timms, Clifford *v.*, 450
- Timothy *v.* Day, 481
- Tinkley *v.* Tinkley, 280
- Titles, Registrar of, Spencer *v.*, 171
- Toal *v.* North British Ry. Co., 440
- Todd, Burns & Co., Donovan *v.*, 184
- Todd and Bradford Corporation, Mulrooney *v.*,  
 396
- Todd and McFadden's Contract, *In re*, 547
- Toppin *v.* Marcus, 134
- Torbet, Hay *v.*, 428
- Tordoff, Moorman *v.*, 356
- Toronto Corporation *v.* Canadian Pacific Ry. Co.,  
 172  
 — *v.* Russell, 176  
 — Ry. Co. *v.* King, 479
- Torrance *v.* Ilford Urban District Council, 440
- Tower, Moore *v.*, 320
- Townsend *v.* Cox, 173, 484
- Townshend (Lord) *v.* Robins; *In re* Townshend's  
 Settlement, 364
- Townshend's Settlement, *In re*; Townshend  
 (Lord) *v.* Robins, 364
- Townson, R. *v.*, 198
- Train *v.* Clapperton, 653
- Tranouth, McVity *v.*, 175
- Trathen, Rossington *v.*; *In re*, One and All Sick-  
 ness and Accident Insurance Associa-  
 tion, 244
- Tremayne *v.* Rashleigh, 558
- Tribune, Ltd., The, *In re*, 492
- Trinity House, Corporation of, Cairn Line of  
 Steamships, Ltd. *v.*, 607
- Trust and Agency Co. of Australasia, Ltd., *In re*,  
 82
- Trustee, The, *Ex parte*; *In re* Leber, 46
- Tuffley *v.* Tate, 646
- Tunncliffe and Hampson, Ltd., West Leigh  
 Colliery Co. *v.*, 160
- Turnbull, King *v.*, 426
- Turnell *v.* Carshalton Park Estate, Ltd.; *In re*  
 The Company, 434
- Turner *v.* Turner, 290  
 — *In re*; Armstrong *v.* Gamble, 696  
 — Wilder *v.*; *In re* Harrington, 41, 223
- "Turquoise, The," 591
- Tshingumuzi *v.* Att.-Gen. for Natal, 483
- Tweedy *v.* The Company; *In re* Escalera Silver  
 Lead Mining Co., Ltd., 69
- Tweedie's Taxation, *In re*, 432
- Tydvil Engineering and Ship Repairing Co.,  
 Morgan *v.*, 395
- Tyler *v.* Dairy Supply Co., Ltd., 235
- Tynemouth Corporation, Smith's Dock Co. *v.*,  
 372, 510
- Tyrone Justices, R. *v.*, 369
- U.
- Ullcoats Mining Co., Ltd., Moore *v.*, 339
- Ullman & Co. *v.* Cesar Leuba, 645
- Umpelby, Douglas-Menzies *v.*, 687
- United Provident Assurance Co., *In re*, and  
*In re* Popular Life Assurance Co.,  
 311
- United States Playing Card Co., *In re*, 638  
 — States Shipping Co. *v.* Empress Assurance  
 Corporation, Ltd., 313
- University College of North Wales *v.* Taylor,  
 677, 694  
 — Court of University of St. Andrews,  
 Nairn *v.*, 210
- Uzielli Co., Ltd., Skinner *v.*, 19
- V.
- Valentine, Moses *v.*; *In re* Moses, 103  
 — and Sons, Ltd., Alexander & Co., Ltd. *v.*,  
 473
- "Valhalla, The," 578
- Vallance *v.* Vallance, 292
- Valley Printing Co. and Rankine, Mansell *v.*,  
 120
- Van den Bergh, Hyman *v.*, 193
- Van Laun, *In re*; *Ex parte* The International  
 Assets Co., Ltd., 32
- Vandeleur, Att.-Gen. for Ireland *v.*, 663
- Vanguard Motorbus Co., *In re*, 91  
 — Motorbus Co., Gibbons *v.*, 446  
 — Motorbus Co., Walton, Isaac & Co. *v.*, 442
- "Venture, The," 571
- Venugopal Chetti *v.* Venugopal Chetti, 275
- Vetch *v.* Elder, 557
- Vickers, Sons & Maxim, Ltd. *v.* Coventry Ord-  
 nance Works, Ltd., 477
- Vigor & Co., Haylett *v.*, 379
- Viola's Lease, *In re*; Humphrey *v.* Stenbury,  
 134, 334
- Vivian (Lord) *v.* Vivian (Lady) and Curphey,  
 291
- Vizianagaram Mining Co., *Ex parte*; *In re*  
 Macfadyen & Co., 29, 35

## W.

- W., In re*; *W. v. M.*, 202  
 Waddle v. Assessment Committee of Sunderland Union, 517  
 Wade, Conway v., 635  
 Wadsworth, St. Ives Corporation v., 258  
 Wagstaff, *In re*; Wagstaff v. Jalland, 483, 685  
     — v. London Corporation, 199  
 Waidanis, *In re*; Rivers v. Waidanis, 653  
 Wainwright, John & Co., Shepton Mallet Rural District Council v., 263  
 Wakefield Corporation v. Wakefield and District Light Rys. Co., 510  
 Wales, University of, Taylor v.; *In re Williams*, 694  
     — North, University College of, *Ex parte*; R. v. Special Commissioners of Income Tax, 296  
     — North, University College of, and University of Wales v. Taylor, 677, 694  
 Walkem, R. v., 485  
 Walker, *In re*; McColl v. Bruce, 468  
     — Burgoyne v., 403  
     — Mackintosh-Walker v.; Walker, *In re*, 554  
     — Peter and Sons, Ltd. v. Hodgson, 186  
     — Peter and Son, Ltd., Liverpool Corporation v., 321  
     — Steam Trawl Fishing Co., *In re*, 84  
 Wall, R. v., 136  
 Wallace v. Hawthorne, Leslie & Co., 400  
 Wallis, Davis v., 514  
 "Wallsend, The," 600  
 Walmsley, *In re*; *Ex parte* The Bankrupt, 32  
 Walsh, Cork Rural Council v., 238  
     — v. Southwark Borough Council, 497  
 Walton, Isaac & Co. v. Vanguard Motorbus Co., 442  
 Wandsworth Borough Council, Anderson v., 52  
 Ward, *Ex parte*; *In re* Attree, 37  
 Waring v. Painter Stainers' Company; *In re* Barnett, 60  
 Warncken v. Moreland and Son, Ltd., 394  
 Warner, R. v., 156  
 Waterhouse v. Ryley; *In re* Waterhouse, 467  
     — and Sons, Malcolm, Brunker & Co. v., 10  
 Watkins, Thompson v.; *In re* Thompson, 530  
 Watson, Lawson's Executors v., 44  
     — National House Property Investment Co., Ltd. v., 86  
     — and Coleman, *In re*, 18, 486  
     — and Parker v. Gregory, 8  
 Watt v. Callard, 107  
 Watts, Mary, and Attorney-General for British Columbia v. Rubin Watts, 174  
 Way and London United Tramways Co., Ltd., *In re*, 94  
 Weatheritt, Evans v., 235  
 Weaver, R. v., 147  
 Webb v. Crouch (Att.-Gen. for Australia intervening); Webb v. Flint (Att.-Gen. for Australia intervening), 484  
     — v. Flint, 484  
     — Howatson v., 167  
 Webber, Ponsolle v., 619  
 Weber, Wood v., 123  
 Wedge v. Panter; *In re* Wedge, 491  
 Wedgerfield v. De Bernardy, 4  
 Wednesbury Corporation, Lodge Holes Colliery Co. v., 262  
 Weighell, *In re*; *Ex parte* Taber, 34  
 Weinburg, *In re*; *Ex parte* Official Receiver, 34  
 Weir v. Brown, 61  
 "Welsh Girl, The" (or "The Commonwealth"), 317  
 Welton v. Taneborne, 622  
 West v. Bristol Tramways Co., 648  
     — v. Wythes; *In re* Wythes, 559  
     — Derby Union Assessment Committee, Liverpool Corporation v., 523  
     — Ham Corporation v. Thomas, 271  
     — Ham Union v. Edmonton Union, 465  
     — Leigh Colliery Co. v. Tunncliffe and Hampson, Ltd., 160  
     — Riding Justices, R. v., 516  
     — Yorkshire Darracq Agency, Ltd., *In re*, 88  
 Westacott, R. v., 150  
 Westcott v. Westcott, The King's Proctor showing cause, 281  
 Western v. Kensington Assessment Committee, 513  
 Westminster Syndicate, Ltd., *In re*, 70  
 Weston-super-Mare Urban District Council, Williams v., 355  
 Weymouth v. Davis, 527  
 Westgate v. Crowe, 124  
 Westminster Corporation v. Gordon Hotels, Ltd., 373, 416  
     — Corporation v. Rector, etc., St. George's, Hanover Square, 53  
 Whaley v. Roehrich; *In re* Whaley, 525  
 Whetherly, Samuel Brothers, Ltd. v., 540  
 Whitbread v. Arnold, 391  
 White, *Ex parte*; *In re* Bumpus, 29, 187  
     — v. Butt, 488  
     — v. Pollard, 549  
     — v. Summers, 699  
     — and Hales v. Islington Borough Council, 514  
     — and Park, Graham v., 615  
 Whitehead v. Palmer, 224  
     — *In re*; Bishop of Wakefield v. Att.-Gen., 58  
 Whitehouse v. Pickett, 304

- Whiteley, William, *Ld. v. Burns*, 533  
 — William, *Ld., Philippart v. ; In re Philippart's Trade Mark*, 641  
 Whitley, R. *v.*, 142  
 Whitmores (Edenbridge), *Ld. v. Stanfords*, 192  
 Whitney, Beamish *v.*, 351  
 Whittall & Co. *v. Rahtken's Shipping Co., Ld.*, 580  
 Whitting *v. Whittings*, 459  
 Whitton, Mitchell *v.*, 394  
 Whyte, Falconer *v.*, 233  
 Widows' Fund of the Faculty of Procurators in Glasgow, *Colquhoun v.*, 310  
 Wigan *v. English and Scottish Law Life Assurance Association*, 308  
 Wilbraham, R. *v.*, 625  
 Wilder *v. Turner ; In re Harrington*, 41, 223  
 Wilford *v. West Riding of Yorkshire County Council*, 200  
 Wilkins *v. McGinity*, 135  
 — and Others, R. *v.*, 369  
 Wilkinson *v. Alton*, 240  
 — Dawes *v.*, 234  
 — Ferniehough *v. ; In re Howe*, 683  
 Williams, *In re ; Taylor v. University of Wales*, 694  
 — Jaffer and Others *v.*, 102  
 — Joseph, *Ld. v. Moore and Another*, 118  
 — *v. Midland Ry. Co.*, 56  
 — *v. O'Keefe and Others*, 485  
 — *v. Star Newspaper Co.*, 215  
 — *v. Weston-super-Mare Urban District Council*, 355  
 Williams' (*or Wilson*) Music and General Printing Co. *v. Finsbury Borough Council*, 414  
 Williamson, Ismay Imray & Co. *v.*, 379  
 — R. *v.*, 149  
 — *v. Thomas*, 190  
 Willingale *v. Norris*, 415  
 Willoughby, Pickering *v.*, 135  
 Willis *v. Young*, 252  
 Wills *v. Adams*, 336  
 Wilmott *v. Southwell*, 625  
 Wilson, *In re ; Wilson v. Batchelor*, 691  
 — *In re ; Wilson v. Wilson*, 698  
 — *v. Carnley*, 112  
 — Durose *v.*, 137  
 — *v. Harper*, 10, 110  
 — *v. Oliver ; In re Oliver*, 695  
 — *v. Stevens*, 491  
 — *v. Wilson*, 284  
 — and Sons, Bond *v.*, 403  
 — Sons & Co., Dittmar *v.*, 398  
 Winkworth *v. Winkworth*, 290  
 — R. *v.*, 149  
 Winn, King *v. ; In re Jameson*, 680  
 Wi Matua, *In the Matter of the Will of*, 484  
 Winans *v. R.*, 161  
 Winslowe *v. Bushey Urban District Council*, 439  
 Winstanley, Overseers of North Manchester *v.*, 520  
 Withey, Lockett *v.*, 14  
 Wolstanton United Urban District Council and Burslem Corporation, *In re*, 254  
 Wood, Catt *v.*, 243  
 — Cobbett *v.*, 611  
 — Luckett *v.*, 246  
 — *v. Weber*, 123  
 — and Brydges, Brydges *v.*, 283  
 Woodcock, R. *v.*, 373  
 Wood Green Urban District Council *v. Joseph*, 563  
 Woodham Smith *v. Edwards, Haslam & Co., Garnishees*, 481  
 Woodruff *v. Att.-Gen. for Ontario ; Att.-Gen. for Ontario v. Woodruff*, 175  
 Woodward *v. Phillips ; In re Everard*, 678  
 Woolf, Leschallas *v.*, 334  
 Woolwich Borough Council, *In re Postmaster-General and*, 628  
 Woolwich Corporation, *Ex parte*, 97  
 Worcester Election Commissioners, Caldicott *v.*, 206  
 Workman, Clark & Co. *v. Lloyd Brazileño*, 474  
 Wormald *v. Oliver ; In re Wormald's Settled Estate*, 555  
 Wrenn, *In re*, 681  
 Wright, *Ex parte ; In re Johnson*, 33, 545  
 — Perry *v.*, 383  
 Wright, *In re*, 220  
 — R. *v. ; Ex parte Bradford Corporation*, 371  
 — *v. Anderton*, 303  
 — *v. Marquis of Zetland*, 110  
 — Rowland *v.*, 387  
 Wrightson, *In re ; Wrightson v. Cooke*, 655  
 Wrigley *v. Lowndes*, 469  
 Wyler and The Ibo and Nyassa Corporation *v. Lewis*, 214  
 Wyndham and Albery, Shoolbred, James & Co. *v.*, 107  
 Wynter *v. Orlebar ; In re Orlebar*, 162  
 Wythes, *In re ; West v. Wythes*, 559
- Y.
- Yangtze Insurance Association *v. Indemnity Mutual Marine Assurance Co.*, 318  
 Yardley's Settlement, *In re ; Milward v. Yardley*, 687  
 Yates *v. Morton ; In re Dodson*, 449  
 — *v. Cyclists' Touring Club*, 79  
 Yolland, Husson and Birkett, *Ld., In re ; Leicester v. The Company*, 72  
 Yorke Peninsula Licensing District, Justices of, Rieken *v.*, 170

# LIST OF CASES DIGESTED.

xxxvii

Yorkshire, West Riding of, County Council,	Young, Willis <i>v.</i> , 252
Wilford <i>v.</i> , 200	Yuill & Co. <i>v.</i> Scott-Robson, 312, 542
— (Woollen District) Electric Tramways,	
Ld., Att.-Gen. <i>v.</i> , 533	Z
— Rivers Board, West Riding of, <i>v.</i> Butter-	Zacklynski <i>v.</i> Polushie, 173
worth & Co., 662	Zetland, Marquis of, Wright <i>v.</i> , 110
Young, Hollis <i>v.</i> , 16	Zick <i>v.</i> London United Tramways, Ld., 94
— Cameron <i>v.</i> , 551	Zugg <i>v.</i> Cunningham, Ld., 395
— Staples <i>v.</i> , 422	





BUTTERWORTHS'  
Yearly Digest  
OF  
REPORTED CASES FOR THE YEAR 1908.

---

**ABATEMENT OF LEGACY. ACCESSORIES.**

*See* WILLS.

---

*See* CRIMINAL LAW AND PROCEDURE.

---

**ABATEMENT OF NUIS- ACCIDENTS.**  
**ANCE.**

*See* NUISANCE.

---

*See* FACTORIES AND WORKSHOPS; IN-  
SURANCE; MASTER AND SERVANT;  
NEGLIGENCE; NUISANCE; RAIL-  
WAYS, ETC.

---

**ABETTORS.**

*See* CRIMINAL LAW AND PROCEDURE.

---

**ACCOMMODATION WORKS.**

*See* RAILWAYS AND CANALS.

---

**ABSCONDING DEBTOR.**

*See* BANKRUPTCY AND INSOLVENCY.

---

**ACCOMPLICE.**

*See* CRIMINAL LAW AND PROCEDURE.

---

**ABSOLUTE GIFT.**

*See* WILLS.

---

**ACCORD AND SATIS-  
FACTION.**

*See* CONTRACT; JUDGMENT No. 3.

---

**ABSTRACT OF TITLE.**

*See* SALE OF LAND.

---

**ACCOUNTS AND IN-  
QUIRIES.**

*See* EXECUTORS AND ADMINISTRATORS;  
MORTGAGES; PARTNERSHIP; PRAC-  
TICE AND PROCEDURE; TRUSTS.

---

**ABUTTING.**

*See* BOUNDARIES AND FENCES.

---

**ACCEPTANCE.**

*See* BILLS OF EXCHANGE; CONTRACT;  
SALE OF GOODS.

**ACCRETION.**

*See* WATERS AND WATERCOURSES.

## ACCUMULATIONS.

See PERPETUITIES.

## ACKNOWLEDGMENTS.

See EVIDENCE; LIMITATION OF ACTIONS; REVENUE.

## ACT OF GOD.

See CONTRACT; NEGLIGENCE; SHIPPING AND NAVIGATION; STATUTES; WATERS AND WATERCOURSES.

## ACT OF PARLIAMENT.

See PARLIAMENT; STATUTES.

## ACT OF STATE.

See CONFLICT OF LAWS; PUBLIC AUTHORITIES.

## ACTION.

I. ACTIO PERSONALIS, ETC. . . . .	COL. 3
[No paragraphs in this vol. of the Digest.]	
II. MAINTENANCE AND CHAMPERTY . . . . .	3
III. GENERAL . . . . .	4

See also ADMIRALTY; ALIEN; ELECTRIC LIGHTING; MASTER AND SERVANT; MORTGAGE; PATENTS; PRACTICE AND PROCEDURE; SHIPPING; TRADE MARKS, ETC.

### I. ACTIO PERSONALIS, etc.

[No paragraphs in this vol. of the Digest.]

### II. MAINTENANCE AND CHAMPERTY.

1. *Champerty—Sale of Information as to Property—Agreement to give Share of Property Recovered—Legality.*—There is nothing illegal in a sale by one person to another of information likely, or supposed to be likely, to lead to the recovery of property, and in an agreement to pay the person selling the information a share of the property if and when recovered. But if the seller of the information further contracts that he will himself recover or assist in recovering the property, and provide evidence by which it may be recovered, and will take his remuneration in the form of a share of the property when recovered, the agreement is champertous and void.

*Rees v. De Bernardy* ([1896] 2 Ch. 437; 65 L. J. Ch. 656; 74 L. T. 585; 12 T. L. R. 412), *Romer, J.*, followed.

*WEDGERFIELD v. DE BERNARDY*, 24 T. L. R. [497—*Parker, J.*]

Affirmed, 25 T. L. R. 21—*C. A.*

2. *Maintenance—Common Interest—Trade Rivals—Agreement to Indemnify Customers against Action by Rival.*—Three tradesmen, A., B., and C., had agreed with the plaintiffs to use for a specified period an apparatus made and leased by the plaintiffs. The defendants, who made a competing apparatus, persuaded A., B., and C. to hire an apparatus from them; and they agreed to indemnify A., B., and C. against any claim by the plaintiffs for breach of contract. The plaintiffs sued A., B., and C., failing as against A. on the ground that their apparatus had broken down, but succeeding against B. and C. The defendants paid the damages and costs under their indemnity agreement. The plaintiffs now sued the defendants for maintenance.

HELD—that they could not succeed, for the defendants, in giving the indemnities, had not exceeded the legitimate defence of their commercial interests.

*BRITISH CASH AND PARCEL CONVEYORS, LD. v. LAMSON STORE SERVICE CO., LD.*, [1908] 1 K. B. 1006; 77 L. J. K. B. 649; 98 L. T. 875—*C. A.*

### III. GENERAL.

3. *Jurisdiction—Administration—Foreign Land—Parties Resident in England—Practice.*

—As a general rule, although all parties to a suit in an English Court are resident in England, the Court will not adjudicate on questions relating to the title to, or the right to the possession of, foreign land. The exceptions to this rule depend on the existence between the parties of some personal obligation, fiduciary relationship, or fraud, or other conduct which in the view of an English Court of Equity would be unconscionable.

In 1831 D. married T. in France, both of them being domiciled French subjects. The plaintiff, their only son, alleged that according to French law T. thereby became entitled to one half of the after-acquired property of D.

In 1836 D. went to India, and in 1839 went through a form of marriage with X. In 1865, by a settlement, of which the defendants were trustees, he settled on X. certain land in India alleged to have been acquired by him since 1831. D. and T. having died, an official took out letters of administration to her estate in India, and the plaintiff did the like in England.

All parties being in England, the plaintiff sought to impeach the settlement made in 1865 as having infringed his right under French law.

HELD—that the Court would not interfere.

*In re Hawthorne* ((1883) 23 Ch. D. 743; 52 L. J. Ch. 750; 48 L. T. 701; 32 W. R. 147) followed.

*DESCHAMPS v. MILLER*, [1908] 1 Ch. 856; 77 [L. J. Ch. 416; 98 L. T. 564—*Parker, J.*]

**General—Continued.**

4. *Jurisdiction—Colonial Rates—English Court—Private Street Works—Right to Recover Cost of in English Court—Sydney Corporation Acts, 1879 (43 Vict. New South Wales, No. 3), s. 238, and 1902 (New South Wales Acts, 1902, No. 35), s. 211—Moore Street Improvement Act, 1890 (54 Vict. New South Wales, No. 30), s. 26.]—An action by a colonial municipality to recover a rate levied by them for street improvements pursuant to an Act of a colonial Legislature is not maintainable in the English Courts.*

SYDNEY MUNICIPAL COUNCIL *v.* COOK, 25 [T. L. R. 6; [1908] W. N. 205—Grantham; J.

5. *Order for Payment of Costs of Divorce Suit—Enforcing—No Action Lies for in King's Bench Division.]—An order for costs in divorce proceedings will not support an action in the King's Bench Division, but must be enforced according to the Divorce Rules and Regulations.*

IVIMEY *v.* IVIMEY, [1908] 2 K. B. 260; 77 [L. J. K. B. 714; 99 L. T. 75; 52 Sol. Jo. 482—C. A.

**ACTION IN PERSONAM.**

*See* ADMIRALTY.

**ACTION IN REM.**

*See* ADMIRALTY.

**ADEMPMENT OF LEGACY.**

*See* WILLS.

**ADEN.**

*See* DEPENDENCIES AND COLONIES.

**ADJOINING OWNERS.**

*See* BOUNDARIES AND FENCES; EASEMENTS; HIGHWAYS; METROPOLIS; MINES, MINERALS AND QUARRIES; WATERS AND WATERCOURSES.

**ADMINISTRATION OF ASSETS.**

*See* BANKRUPTCY AND INSOLVENCY; COMPANY; EXECUTORS AND ADMINISTRATORS; TRUSTS AND TRUSTEES.

**ADMIRALTY JURISDICTION AND PRACTICE.**

COL.

**I. HIGH COURT.**

(a) Actions in Personam . . . . .	6
(b) Actions in Rem . . . . .	6
(c) Limitation of Liability . . . . .	7
(d) Salvage Actions . . . . .	7
(e) In General . . . . .	8

**II. COUNTY COURTS.**

(a) Actions in Personam . . . . .	8
[No paragraphs in this vol. of the Digest.]	
(b) Actions in Rem . . . . .	8
[No paragraphs in this vol. of the Digest.]	
(c) Appeal . . . . .	8
(d) Transfer of Action . . . . .	8
[No paragraphs in this vol. of the Digest.]	
(e) In General . . . . .	8
[No paragraphs in this vol. of the Digest.]	

*See also* CONFLICT OF LAWS; SHIPPING AND NAVIGATION.

**I. HIGH COURT.****(a) Actions in Personam.**

1. *Service of Writ out of Jurisdiction—Collision in Foreign Waters—Undertaking to give Security Abroad—"Necessary or proper Party"—Ord. 11, r. 1 (g).—A collision occurred between The City of Bradford and The Hartley, two English vessels, and The Hagen, a German vessel, in the Elbe, and The City of Bradford and The Hagen gave to each other undertakings for bail at Hamburg to answer any claims thereof. The Hartley brought an action in rem against The City of Bradford in England. The City of Bradford then brought an action in personam in the Admiralty Division against the owners of The Hartley and the owners of The Hagen, and applied under Ord. 11, r. 1 (g), for leave to serve notice of the writ on the owners of The Hagen in Germany. At this time no action in Germany had been commenced by The Hagen against The City of Bradford, but an action was subsequently commenced within a reasonable time.*

**HELD**—that the fact that the undertakings for bail were given in Germany, where the collision took place, and that an action either would probably be or had been commenced there within a reasonable time was a circumstance to take into consideration in determining whether to give leave to serve notice of the writ on the owners of the German vessel abroad, and that in the exercise of its jurisdiction the Court ought to refuse leave.

THE HAGEN, [1908] P. 189; 77 L. J. P. 124; [98 L. T. 891; 24 T. L. R. 411; 52 Sol. Jo. 335—C. A.

**(b) Actions in Rem.**

*See* SHIPPING AND NAVIGATION NOS 1, 2.



**High Court—Continued.****(c) Limitation of Liability.**

See also SHIPPING AND NAVIGATION XI. (b).

2. "Owners"—*Charterers by Demise*—*Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), ss. 503, 504.]—The charterer by demise of a ship for a term, who is not the registered owner thereof, but who has complete control of her and navigates her with his own captain and crew, is the "owner" within the meaning of sects. 503 and 504 of the Merchant Shipping Act, 1894, and is entitled to limitation of liability under those sections.

Decision of the C. A. ([1907] P. 254; 76 L. J. P. 110; 97 L. T. 360; 23 T. L. R. 414; 10 Asp. M. C. 492) reversed.

SIR JOHN JACKSON, LD. *v.* THE OWNERS OF [THE STEAMSHIP *BLANCHE* AND OTHERS; THE STEAM HOPPER No. 66, [1908] A. C. 126; 77 L. J. P. 84; 98 L. T. 464; 24 T. L. R. 384; 52 Sol. Jo. 334—H. L.

**(d) Salvage Actions.**

3. *Costs—Payment into Court—Denial of Liability—Smaller Amount recovered—Cost of Issues*—*R. S. C. Ord. 22, r. 6 (c).*]—A tug engaged to tow the defendants' vessel claimed salvage for services rendered whilst the towage contract was interrupted; a second tug claimed both salvage and damages for injury alleged to be caused by negligence of the defendants' vessel. The defendants denied the rendering of any salvage services, and also the negligence, and further alleged an agreement with the second tug for £20. Further, they paid into Court £50 for the first tug and £100 for the second, denying liability for more than the £20 referred to.

The Court found the agreement and negligence to be not proved, but awarded each tug £50 for salvage services, and ordered £50 out of the tender in respect of the second tug to be repaid to the defendants.

HELD—that the plaintiffs were entitled to their costs up to payment into Court, that the defendants were entitled to subsequent costs, and also to any severable costs (subsequent to payment in) in respect of the issues found in their favour.

*Fitzgerald v. Tilling* ((1907) 96 L. T. 718) followed.

THE *BLANCHE*, [1908] P. 259; 77 L. J. P. 99; [99 L. T. 249—Deane, J.

4. *Costs—Reference—Offer to Agree Claim—Necessity for Formal Tender.*]—A collision action was settled on the terms that the plaintiffs should receive 60 per cent. and the defendants 40 per cent. of the amount of the damage done to their respective vessels, the questions of amount to be referred to the Registrar. Before the reference the plaintiffs' solicitors offered by letter to agree the defendants' claim at 40 per cent. of £4,500. The defendants' asked for a formal tender, and the plaintiffs replied that it

was unnecessary having regard to their letter. The Registrar allowed the defendants' claim at a sum below £4,500, but nevertheless gave them the costs of proving their claim.

HELD—that such an offer to agree damages was not a "tender," and was not governed by any rules as to tender; and that the plaintiffs were entitled to the costs thrown away by the non-acceptance of their offer.

THE *READING*, [1908] P. 162; 77 L. J. P. 71; [98 L. T. 590—Deane, J.

**(e) In General.**

5. *Practice—"Short Cause" Rules, 1908.*]—Observations as to the advantages of the new "short cause" rules for disposing of suitable cases speedily and economically.

WATSON & PARKER *v.* GREGORY, [1908] W. N. [328—Barnes, Pres.

**II. COUNTY COURTS.****(a) Actions in Personam.**

[No paragraphs in this vol. of the Digest.]

**(b) Actions in Rem.**

[No paragraphs in this vol. of the Digest.]

**(c) Appeal.**

6. *Admiralty—County Court—Appeal—Less than £50—County Courts Admiralty Jurisdiction Act, 1868* (31 & 32 Vict. c. 71), s. 31.]—This was an appeal from the decision of a county court judge in an action brought to recover £53 6s. 8d. The judge had found for the plaintiffs for £46 13s. 4d. and the defendants appealed.

After the facts of the case had been gone into, it appeared that no point of law was involved.

By the County Courts Admiralty Jurisdiction Act, 1868, s. 31, no appeal is allowed unless the amount decreed or ordered to be due exceeds £50.

HELD—that the Court would not have gone into the facts had they known that no point of law was involved.

THE *BRENNER*, *Times*, November 19th, 1908—[Div. Ct.

**(d) Transfer of Action.**

[No paragraphs in this vol. of the Digest.]

**(e) In General.**

[No paragraphs in this vol. of the Digest.]

**ADMISSIBILITY OF EVIDENCE.**

See EVIDENCE.

**ADMISSIONS.**

See CRIMINAL LAW; EVIDENCE; PRACTICE.

**ADOPTION.**

See BASTARDY; INFANTS.

**ADULTERATION.**

See AGRICULTURE: FOOD AND DRUGS.

**ADULTERY.**

See HUSBAND AND WIFE.

**ADVERTISEMENTS.**

See CONTRACTS; CRIMINAL LAW AND  
PROCEDURE; GAMING AND WAGER-  
ING.

**AFFIDAVIT.**

See EVIDENCE; PRACTICE.

**AFFILIATION.**

See BASTARDY.

**AGENCY.**

	COL.
I. IN GENERAL . . . . .	9
[No paragraphs in this vol. of the Digest.]	
II. AUTHORITY OF AGENT . . . . .	9
III. COMMISSION.	
(a) When payable . . . . .	10
(b) Secret Commissions, etc. . . . .	10
[No paragraphs in this vol. of the Digest.]	
IV. LIABILITY OF AGENT . . . . .	10
[No paragraphs in this vol. of the Digest.]	
V. LIABILITY OF PRINCIPAL . . . . .	10
VI. POWERS OF ATTORNEY . . . . .	11
VII. RATIFICATION . . . . .	11
[No paragraphs in this vol. of the Digest.]	
See also ANIMALS; AUCTIONS AND AUCTIONEERS; BILL OF EXCHANGE; HUSBAND AND WIFE; INSURANCE; MASTER AND SERVANT; STOCK EXCHANGE.	

**I. IN GENERAL.**

[No paragraphs in this vol. of the Digest.]

**II. AUTHORITY OF AGENT.**

1. *Mercantile Agent—Pledge by Broker—  
Authority to Pledge—Custom of Particular  
Trade—Factors Act, 1889 (52 & 53 Vict. c.*

45), s. 2.])—The expression “a mercantile agent” in sect. 2 of the Factors Act, 1889, means a mercantile agent quite independently of the kind of goods he deals in. Therefore, although it may not be usual in a particular trade—*e.g.*, the diamond trade—for a broker to have authority from his principal to pledge goods, nevertheless a pledge by such a broker, who is in possession of goods with the consent of the owner, is, when he is acting in the ordinary course of business of a mercantile agent, valid under sect. 2 of the Factors Act, 1889, provided the pledgee takes in good faith and without notice that the pledger had no authority to make the pledge.

*Quere*, whether a *bonâ fide* pledgee of goods is protected by the section if his pledgor, a mercantile agent, has obtained the goods from his employer by larceny by a trick.

Decision of Channell, J. ([1907] 1 K. B. 510; 76 L. J. K. B. 177; 96 L. T. 501; 23 T. L. R. 182; 12 Com. Cas. 88) affirmed.

OPPENHEIMER *v.* ATTENBOROUGH AND SON, [1908] 1 K. B. 221; 77 L. J. K. B. 209; 98 L. T. 94; 24 T. L. R. 115; 13 Com. Cas. 125—C. A.

**III. COMMISSION.**

**(a) When Payable.**

2. *Personal Contract — Commission Payable “as long as we do Business” with Persons Introduced—Death of Introducer.*]—The defendants agreed to pay to H. 5 per cent. commission on all accounts with persons introduced by him “so long as we do business with them.”

HELD—that H.’s death did not terminate the liability, which continued in favour of his executors so long as the defendants did business with the persons whom he had introduced.

WILSON *v.* HARPER, [1908] 2 Ch. 370; 77 [L. J. Ch. 607; 99 L. T. 391—Neville, J.

**(b) Secret Commissions, etc.**

[No paragraphs in this vol. of the Digest.]

**IV. LIABILITY OF AGENT.**

[No paragraphs in this vol. of the Digest.]

**V. LIABILITY OF PRINCIPAL.**

3. *Fraud of Agent—Benefit of Principal.*]—Where a servant or agent commits a wrong within the scope of his employment, and in the interests, or supposed interests, of the master or principal, and not for his own private and fraudulent purposes, the master or principal is liable. On the other hand, if the wrong is committed by a servant or agent, not for his master’s or principal’s purposes or interests, but to carry out the servant’s own private ends, the master or principal is not liable.

Rule applied in the case of a claim for damages for fraudulent misrepresentation on a sale of goods.

MALCOLM, BRUNKER & CO., LD. *v.* WATER-  
[HOUSE AND SONS, 24 T. L. R. 854—  
Walton, J.

**Liability of Principal—Continued.**

4. *Unauthorised Representation by Agent—Average Returns of Business—Specific Performance.*—The plaintiff, desiring to sell a business, employed an agent to whom he stated, as the fact was, that the takings for a year were £510, and for the last six months of the year £314. The last six months of the year were more profitable owing to the nature of the business. The agent advertised that the average returns were £600 per annum. The defendant in consequence entered into a contract to buy the business, but refused to complete on the ground of misrepresentation.

HELD—that, as the plaintiff had failed to prove that he had communicated the full facts to the defendant, specific performance must be refused.

HEAP v. NASH, 124 L. T. Jo. 293—Eady, J.

**VI. POWERS OF ATTORNEY.**

[No paragraphs in this vol. of the Digest.]

**VII. RATIFICATION.**

[No paragraphs in this vol. of the Digest.]

**AGREEMENT.**

*See CONTRACTS; LANDLORD AND TENANT, ETC.*

**AGRICULTURE.****I. AGRICULTURAL HOLDINGS.**

[No paragraphs in this vol. of the Digest.]

**II. CUSTOM OF THE COUNTRY.**

[No paragraphs in this vol. of the Digest.]

**III. FERTILISERS AND FEEDING STUFFS.**

[No paragraphs in this vol. of the Digest.]

**IV. MARKET GARDENS.**

[No paragraphs in this vol. of the Digest.]

*For ACCIDENTS TO AGRICULTURAL LABOURERS, see MASTER AND SERVANT.*

**AIR.**

*See EASEMENTS AND PROFITS À PRENDRE.*

**ALE AND BEER.**

*See INTOXICATING LIQUORS.*

**ALIENATION, RESTRAINTS ON.**

*See HUSBAND AND WIFE; PERPETUITIES; SETTLEMENTS; TRUSTS.*

**ALIENS.****I. RIGHT TO SUE.**

[No paragraphs in this vol. of the Digest.]

**II. EXPULSION ORDER.**

[No paragraphs in this vol. of the Digest.]

**III. IN GENERAL.**

[No paragraphs in this vol. of the Digest.]

**ALIMONY.**

*See HUSBAND AND WIFE.*

**ALLEGIANCE.**

*See ALIENS.*

**ALLUVION.**

*See WATERS AND WATERCOURSES.*

**ALTERATION OF DOCUMENTS.**

*See BANKERS AND BANKING; BILLS OF EXCHANGE; DEEDS AND OTHER DOCUMENTS; WILLS.*

**AMUSEMENTS.**

*See THEATRES, etc.*

**ANCIENT LIGHTS.**

*See EASEMENTS.*

**ANIMALS.**

	COL.
I. CRUELTY TO ANIMALS . . . . .	12
II. DISEASES OF ANIMALS . . . . .	13
III. DOGS . . . . .	14
IV. LIABILITY FOR INJURY BY . . . . .	15
V. WILD BIRDS PROTECTION . . . . .	15

*And see CARRIERS, Nos. 2, 3; GAME; INSURANCE; NEGLIGENCE; NUISANCE.*

**I. CRUELTY TO ANIMALS.**

1. *Shooting at Cat—Wounding—Failure to Destroy Suffering Animal—Cruelty to Animals*



### Cruelty to Animals—Continued.

*Act, 1849 (12 & 13 Vict. c. 92), s. 2.*—The respondent was charged with unlawfully and cruelly ill-treating a cat contrary to sect. 2 of the Cruelty to Animals Act, 1849. It was proved that the respondent shot at it with a saloon rifle with intent to kill it. The bullet struck it, wounding it severely, and it crawled away out of respondent's view. About thirty minutes later, on the owner of the cat pointing out to the respondent that it was still alive and in great pain, the respondent destroyed it. The respondent did not call the owner's attention to the injured state of the cat, although he knew to whom it belonged, and although he knew that the animal was severely injured he took no steps to have it attended to or its sufferings alleviated.

**HELD**—that the respondent had committed no offence against the section, as the use of a saloon rifle for the purpose of shooting at the cat was not cruelty in itself, and that, as the justices did not find that the respondent after shooting the cat, failed, with knowledge of what he had done, to do his best to put the animal out of its pain, they were justified in dismissing the summons.

*Powell v. Knight* (1878) 42 J. P. 597; 38 L. T. 607; 26 W. R. 721 followed.

*HOOKER v. GRAY*, 71 J. P. 337; 96 L. T. 706; 23 [T. L. R. 472; 21 Cox, C. C., 437—Div. Ct.

## II. DISEASES OF ANIMALS.

**2. Carcasses Washed Ashore—Disposal under Diseases of Animals Act, 1894—Right of the Local Authority to Recover Expenses of Burial against Shipowner—Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), s. 46.**—Carcasses of mutton, frozen and free from disease when shipped, which are washed ashore out of a stranded vessel, are "carcasses" within the meaning of s. 46 of the Diseases of Animals Act, 1894, and where a local authority has incurred expenses in connection with their burial under the direction of a receiver of wreck, with authority from the Board of Trade, the owner of the stranded vessel is liable to repay such expenses to the local authority.

*THE SUEVIC*, [1908] P. 292; 72 J. P. 407; 77 [L. J. P. 152; 99 L. T. 474; 24 T. L. R. 699; 6 L. G. R. 946—Div. Ct.

**3. Sheep—Dipping — Offence — Sheep Dipping (North of England) Order of 1906.**—The appellant duly obtained an exemption from the provisions of art. 3 of the Sheep Dipping (North of England) Order of 1906, subject to the condition that his sheep should be dipped between September 15th and 30th, 1906. The appellant on September 26th, 1906, dipped his sheep in a sheep dip, but such sheep dip was not a sheep dip approved by the Board of Agriculture and Fisheries, and except by the aforesaid dipping the sheep were not dipped at all between September 15th and 30th, 1906. The appellant was thereupon convicted for that he, on September 26th, 1906, did not dip the sheep

in a sheep dip approved by the Board of Agriculture and Fisheries.

**HELD**—that the offence really committed was the non-dipping of the sheep between September 15th and 30th, 1906, in a sheep dip approved by the Board of Agriculture and Fisheries; that the conviction was bad and must be quashed.

*BINGLEY v. QUEST*, 71 J. P. 443; 97 L. T. 394; [5 L. G. R. 938; 21 Cox, C. C. 505—Div. Ct.

## III. DOGS.

*See also IV, infra.*

**4. Dangerous Dog—Order as to Control—Powers of Justices—Dogs Act, 1871 (34 & 35 Vict. c. 56), s. 2.**—*Quære*, whether justices are entitled to prescribe a particular mode of control for a dangerous dog, *e.g.*, that it be chained up at night, and led in a leash by day.

*R. v. OWEN*, 72 J. P. 60; 52 Sol. Jo. 132—[Div. Ct.

**5. Dangerous Dog—Order for Destruction—Removal of Dog out of Jurisdiction—Power of Justices to make Order—Dogs Act, 1871 (34 & 35 Vict. c. 56), s. 2.**—On March 20th, 1908, the appellant's dog, which had previously bitten several people, bit the respondent's daughter. After March 20th, and before the date of an information preferred against the appellant under sect. 2 of the Dogs Act, 1871, he sent the dog out of the jurisdiction of the police court, and it continued outside that jurisdiction at the time of the hearing of the information. The justices found that the appellant was the owner of the dog at the time of the offence, and that there had been no *bonâ fide* disposal of it, and they made an order adjudging that the dog should be destroyed.

**HELD** (dismissing the appeal)—that the fact that a dangerous dog has been sent out of the jurisdiction of the particular court before the information is preferred, or heard, does not prevent the justices making an order, provided there has not been a *bonâ fide* disposal of the dog.

*LOCKETT v. WITHEY*, 72 J. P. 492; 25 T. L. R., [16—Div. Ct.

**6. Regulation Prescribing Collar—Pack of Hounds—Used for Sporting Purposes—Dogs Order of 1906, art. 1 (1).**

The Dogs Order of 1906 (made by the Board of Agriculture and Fisheries), art. 1 (1), empowers local authorities to make regulations prescribing the wearing by dogs, while in a highway or place of public resort, of a collar with the name and address of the owner, but provides that this regulation shall not apply to any pack of hounds, or any dog while being used for sporting purposes.

**HELD**—that for the purposes of this Order a foxhound puppy which belonged to a pack of hounds and was registered as a member of the pack and branded as such, and which was being "walked" for the hunt which owned the pack, came within the expression "pack of hounds," and was therefore exempt from wearing a collar



**Dogs—Continued.**

with the name and address of its owner, though not actually being used for sporting purposes.

BURTON v. ATKINSON, 72 J. P. 198; 98 L. T. [748; 24 T. L. R. 498—Div. Ct.

**IV. LIABILITY FOR INJURY BY.**

7. *Ferocious Dog entrusted to Servant—Animal let loose by Servant—Liability of Master for Injury to Third Person.*—A dog which was known by its owner to be ferocious was entrusted by him to the care of a man-servant, who had instructions to let it out for a run each morning, and to bring it back and tie it up before the other servants came down. One morning the man-servant, after having let the dog out, brought it into the kitchen where two maid-servants were, and, saying that the dog would not bite, he let it loose. The dog bit one of the maid-servants. In an action by her in the county court against the owner of the dog to recover damages for the injuries so caused, the plaintiff was nonsuited.

HELD—that there must be a new trial, *per* Sutton, J., as the master knew the dog to be vicious, he kept it at his peril, and was not excused by the intervening act of even a stranger; *per* Channell, J. (disagreeing on the above point), there was evidence on which a jury could find that the act of the servant in loosing the dog was done in neglect of his duty to look after the dog.

BAKER AND ANOTHER v. SNELL, [1908] 2 K. B. [352; 77 L. J. K. B. 726; 24 T. L. R. 599; 52 Sol. Jo. 483—Div. Ct.

On appeal, order for new trial affirmed, Cozens-Hardy, M. R., and Farwell, L. J., agreeing with Sutton, J.; Kennedy, L. J., agreeing with Channell, J., [1908] 2 K. B. 825; 77 L. J. K. B. 1090; 24 T. L. R. 811; 52 Sol. Jo. 681—C. A.

**V. WILD BIRDS PROTECTION.**

8. *Possession of Wild Birds*—"Recently Taken"—*Prima facie Evidence—Wild Birds Protection Act, 1880* (43 & 44 Vict. c. 35), s. 3—"Wild Birds Protection Act, 1881" (44 & 45 Vict. c. 51), s. 2.—The respondent, a dealer in wild birds, was summoned for knowingly and wilfully having in his possession on July 30th, 1907, certain wild birds, namely, seven young larks, recently taken. Evidence was given by the appellant, an inspector of the Society for the Prevention of Cruelty to Animals, that he had found on the respondent's premises seven young larks, which he considered were birds of the same year, recently taken, because they were very wild, beating themselves against the bars of their cages, and their feathers were of a light colour. This evidence was corroborated by another inspector of the society. No evidence was called to show how or when the birds came into the possession of the respondent. The magistrate was of opinion that there was no evidence that the larks were recently taken, and he dismissed the summons without calling on the respondent.

HELD—that there was *prima facie* evidence that the larks in question had been recently

taken, and that the magistrate ought to have considered the case further.

HOLLIS v. YOUNG, 72 J. P. 199; 98 L. T. 751; [24 T. L. R. 500—Div. Ct.

9. *Variation of Close Time—Public Notice of Order—Condition Precedent to Prosecution—Wild Birds Protection Act, 1894* (57 & 58 Vict. c. 24), s. 4 (1).—The public notice, prescribed by sect. 4 of the Wild Birds Protection Act, 1894, of an Order made by a Secretary of State under the Wild Birds Protection Acts, 1880 to 1902, prohibiting the killing and taking of wild birds during that period of the year to which the protection afforded by the Wild Birds Protection Act, 1880, does not extend, is not a condition precedent to a prosecution for having in one's control or possession wild birds recently taken, contrary to sect. 3 of the Wild Birds Protection Act, 1880, as varied by the Order.

DUNCAN v. KNILL, 71 J. P. 287; 96 L. T. 911; [5 L. G. R. 620; 21 Cox, C. C. 457—Div. Ct.

**ANNUITY.**

See RENT-CHARGES AND ANNUITIES.

See also DEATH DUTIES; INCOME-TAX; REVENUE; SETTLEMENTS; TRUSTS; WILLS.

**ANTICIPATION, RESTRAINT ON.**

See HUSBAND AND WIFE; PERPETUITIES; PERSONAL PROPERTY; REAL PROPERTY AND TRUSTS.

**APOLOGY.**

See LIBEL AND SLANDER.

**APOTHECARIES.**

See MEDICINE AND PHARMACY.

**APPEAL.**

See BANKRUPTCY; DEPENDENCIES AND COLONIES; COUNTY COURTS; COURTS; CRIMINAL LAW AND PROCEDURE; MAGISTRATES; PRACTICE AND PROCEDURE, ETC.

**APPEALS AS TO LICENSING.**

See INTOXICATING LIQUORS.

## APPEALS AS TO RATING.

See RATES AND RATING.

## APPOINTMENT, POWERS OF.

See POWERS.

## APPORTIONMENT.

See LANDLORD AND TENANT; REAL PROPERTY AND CHATTELS REAL; RENT-CHARGES AND ANNUITIES; SETTLEMENTS; TRUSTS; WILLS.

## APPRAISERS.

See VALUERS AND APPRAISERS.

## APPRENTICES.

See INFANTS; MASTER AND SERVANT.

## APPROPRIATION OF PAYMENT.

See BANKERS AND BANKING; CONTRACT; MONEY AND MONEY-LENDING; MORTGAGE.

## ARBITRATION.

*with Written Contract.*]—By a contract in writing the appellants sold to the respondents 300 tons of rubber “fair quality Banjerminssin Jelutong at £18 15s. per ton c.i.f. Liverpool” . . . and the contract provided: “Any dispute on this contract to be settled by arbitration here in the usual way.” On arrival of the rubber at Liverpool the respondents refused to take delivery on the ground that the goods were not in accordance with the contract. The dispute was referred to arbitrators, who found that the goods were not in accordance with contract, but must be accepted by the buyers at an allowance of 10s. per ton. The award was based upon an alleged custom applicable to contracts for raw material to be shipped to this country, that the buyers should accept the goods with an allowance for inferiority of quality, where that inferiority was, in the opinion of the arbitrators, not excessive or unreasonable. Upon a motion by the respondents to set aside the award, the Court, with counsel’s consent, directed an issue to determine the existence of the alleged custom, and upon the trial of the issue the alleged custom was found not to exist.

**HELD**—that the arbitrators had no jurisdiction to deal conclusively with the question of the existence of the custom, and that, as the custom had been found not to exist in fact, the award compelling the respondents to accept goods not in accordance with the written contract was bad and must be set aside.

*Hutcheson v. Eaton* (1884) 13 Q. B. D. 861; 51 L. T. 846—C. A.) discussed and followed.

**IN RE NORTH WESTERN RUBBER CO. AND [HUTTENBACH & Co., [1908] 2 K. B. 907**  
—C. A.

### II. AWARD.

**2. Enforcing Award—Practice and Procedure**  
—*Appeal direct to Court of Appeal—Arbitration Act, 1889* (52 & 53 Vict. c. 49), ss. 1, 12; *Judicature Act, 1894* (57 & 58 Vict. c. 16), s. 1, sub-s. 4.]  
—An application to enforce an award under sect. 12 of the Arbitration Act, 1889, is a matter of practice and procedure within the meaning of sect. 1, sub-sect. 4, of the Judicature Act, 1894, and an appeal from an order made thereon by a judge at chambers lies direct to the Court of Appeal.

**IN RE COLMAN AND WATSON, [1908] 1 K. B. [47; 77 L. J. K. B. 121; 97 L. T. 857; 24 T. L. R. 39—C. A.]**

### III. COSTS.

[No paragraphs in this vol. of the Digest.]

### IV. SPECIAL CASE.

[No paragraphs in this vol. of the Digest.]

### V. SUBMISSION TO ARBITRATION.

#### (a) Effect of.

**3. Staying Proceedings—Agreement to Refer Dispute to Foreign Court.**—An agreement to refer disputes to a foreign tribunal entitles a defendant to a stay of proceedings in this country,

COL.

I. ARBITRATORS AND UMPIRES. . . 17

II. AWARD . . . 18

III. COSTS . . . 18

[No paragraphs in this vol. of the Digest.]

IV. SPECIAL CASE . . . 18

[No paragraphs in this vol. of the Digest.]

V. SUBMISSION TO ARBITRATION.

(a) Effect of . . . 18

(b) Pleading as defence to Action. 19

[No paragraphs in this vol. of the Digest.]

(c) Revocation . . . 19

[No paragraphs in this vol. of the Digest.]

See also AGRICULTURE; BUILDERS; COMPULSORY PURCHASE; DEPENDENCIES AND COLONIES, No. 22; FRIENDLY SOCIETIES; INSURANCE, No. 2; MASTER AND SERVANT; PRACTICE AND PROCEDURE.

### I. ARBITRATORS AND UMPIRES.

**1. Jurisdiction of Arbitrators—Sale of Goods by Description—Award based on Custom subsequently found Not to Exist—Custom Inconsistent**

**Submission to Arbitration—Continued.**

unless the plaintiff makes out a case for an injunction.

KIRCHNER & Co. v. GRUBAN, 53 Sol. Jo. 151—  
[Eve, J.]

**3a. Staying Proceedings—County Court—Submission to Arbitration—Jurisdiction of County Court—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 4, 27.]**—A county court judge has jurisdiction, under sect. 4 of the Arbitration Act, 1889, to stay proceedings in an action where there is a submission to arbitration.

*Dicta in Runciman & Co. v. Smyth & Co.* (1904) 20 T. L. R. 625) not followed.

MORRISTON TINPLATE Co. v. BROOKER DORE & Co., [1908] 1 K. B. 403; 77 L. J. K. B. 197; 98 L. T. 219; 24 T. L. R. 224; 52 Sol. Jo. 210—Div. Ct.

**4. Staying Proceedings—County Court—Step in Proceedings—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.]**—The plaintiff brought an action in the county court for breach of contract by non-delivery of a dog bought at a show. At the hearing, after the plaintiff's solicitor had opened the case and had read the correspondence and schedule of regulations governing the show, the defendants' solicitor called attention to a rule of the schedule whereby all disputes were to be referred to the Kennel Club committee. The Judge thereupon non-suited the plaintiff on the ground that he must be deemed to have acquiesced in the regulations. The plaintiff appealed.

**HELD** (allowing the appeal) by Ridley, J., that the defendant had taken a step in the proceedings within the meaning of sect. 4 of the Arbitration Act, 1889; and by Darling, J., that no application under sect. 4 had been made, and that a non-suit was not contemplated by that section.

DICKENS v. SPENCE, *Times*, April 13th, 1908—  
[Div. Ct.]

**5. Staying Proceedings—Underwriter at Lloyd's employed to effect Policies—Alleged Custom at Lloyd's to take Commission on Premiums—Agreement in Contract of Employment to refer Disputes—Arbitrator to be Member of Lloyd's—Action for Account to recover Commissions—Alleged Bias in Arbitrators—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.]**—The Court made an order under sect. 4 of the Arbitration Act, 1889, staying all further proceedings in an action upon the ground that a member of Lloyd's, to whom disputes were to be referred under the agreement in issue, was the most convenient tribunal to decide the fact whether an alleged custom to take commissions at Lloyd's existed or not.

SKINNER v. E. UZIELLI & Co., LTD. 24 T. L. R. 266—Eve, J.

**(b) Pleading as Defence to Action.**

[No paragraphs in this vol. of the Digest.]

**(c) Revocation.**

[No paragraphs in this vol. of the Digest.]

**ARCHITECT.**

See BUILDERS, ENGINEERS AND ARCHITECTS; WORK AND LABOUR.

**ARMORIAL BEARINGS.**

See WILLS.

**ARMY.**

See ROYAL FORCES.

**ARRANGEMENT WITH CREDITORS.**

See BANKRUPTCY AND INSOLVENCY.

**ARTICLED CLERK.**

See SOLICITOR.

**ARTICLES OF ASSOCIATION.**

See COMPANIES.

**ARTICLES OF PARTNERSHIP.**

See PARTNERSHIP.

**ARTIZANS' DWELLINGS.**

See PUBLIC HEALTH.

**ASSESSMENT.**

See RATES AND RATING.

**ASSIGNMENT FOR BENEFIT OF CREDITORS.**

See BANKRUPTCY AND INSOLVENCY.



**ASSOCIATIONS.**

*See* BUILDING SOCIETIES; CLUBS;  
COMPANIES; FRIENDLY SOCIETIES;  
INDUSTRIAL SOCIETIES; TRADE AND  
TRADE UNIONS.

**ASYLUMS.**

*See* CHARITIES; LOCAL GOVERNMENT;  
LUNATICS; POOR LAW; PUBLIC  
HEALTH.

**ATTACHMENT OF DEBT.**

*See* BANKRUPTCY AND INSOLVENCY;  
COUNTY COURTS; EXECUTION;  
PRACTICE AND PROCEDURE.

**ATTACHMENT OF PERSON.**

*See* COMPANIES; CONTEMPT OF COURT.

**ATTORNEY.**

*See* SOLICITORS. FOR POWER OF  
ATTORNEY, *see* AGENCY.

**AUCTIONS AND  
AUCTIONEERS.**

I. AUCTIONS . . . . . COL.  
21  
[No paragraphs in this vol. of the Digest.]

II. AUCTIONEERS.  
(a) Liability . . . . . 21  
(b) Generally . . . . . 22  
[No paragraphs in this vol. of the Digest.]

*See also* AGENCY; SALE OF GOODS;  
TROVER AND CONVERSION.

I. AUCTIONS.  
[No paragraphs in this vol. of the Digest.]

**II. AUCTIONEERS.****(a) Liability.**

1. *Misrepresentation as to Pictures—Innocent Misrepresentation by Auctioneer—Purchaser Stopping Cheque—Auctioneer's Right to Sue on.*—The owner of pictures erroneously, but not fraudulently, told an auctioneer that they were painted by certain well-known artists. The auctioneer so described them in his sale catalogue. The auctioneer sold the pictures and settled accounts with the owner. At a later

date the purchaser returned the pictures and stopped his cheque.

**HELD**—the auctioneer was entitled to sue on the cheque given by the purchaser as the catalogue had been prepared on the instructions of the vendor, and the misrepresentation made by the auctioneer was made in good faith by him, and as the return of the pictures and the stopping of the cheque by the purchaser did not put the parties in the same position as they were before.

Decision of Pickford, J. (98 L. T. 44) affirmed.

**HINDLE v. BROWN**, 98 L. T. 791—C. A.

**(b) Generally.**

[No paragraphs in this vol. of the Digest.]

**AUDITORS.**

*See* COMPANIES.

**AUSTRALIA.**

*See* DEPENDENCIES AND COLONIES.

**AVERAGE.**

*See* SHIPPING AND NAVIGATION.

**BAIL.**

*See* ADMIRALTY, No. 1; CRIMINAL LAW  
AND PROCEDURE.

**BAILEE, LARCENY BY.**

*See* CRIMINAL LAW.

**BAILIFF.**

*See* SHERIFFS AND BAILIFFS; COUNTY  
COURTS; EXECUTION; INTER-  
PLEADER.

**BAILMENT.**

COL.  
I. HIRE PURCHASE AGREEMENTS . . . 22  
II. LIABILITY OF BAILEE . . . 23  
III. LIABILITY OF BAILOR . . . 23  
[No paragraphs in this vol. of the Digest.]

*See also* CARRIERS; CRIMINAL LAW;  
INNKEEPERS; PAWNBROKERS, ETC.

**I. HIRE PURCHASE AGREEMENTS.**

1. *Hire of Goods—Hiring Agreement with Option of Purchase—Power of Owner to Retake*



**Hire Purchase Agreements—Continued.**

on *Breach of Agreement—Right to also Sue for Arrears of Rent.*—B. let furniture on hire, the hirer paying a lump sum in consideration of an option to purchase at any time during the term of hiring, and also a monthly sum as rent. The hirer could terminate the agreement by a week's notice, and B. could retake the goods if the hirer failed to duly perform the agreement. The rent being in arrear, B. retook possession.

**HELD**—that he could also sue for the arrears of rent.

*Hewison v. Ricketts* ((1894), 63 L. J. Q. B. 711; 71 L. T. 191—Div. Ct.) distinguished.

*BROOKS v. BEIRNSTEIN*, [1908] W. N. 238—[Div. Ct.]

See also **MORTGAGES**, Nos. 1, 2.

**II. LIABILITY OF BAILEE.**

2. *Goods sent on Approval—Lost through Fraud of a Stranger—Negligence.*—The plaintiff, a furrier, sent to the defendants' house boxes containing furs on approval. They were handed to the defendants' maidservant, who signed a receipt for them. Shortly afterwards a man called for the goods, saying that they had been left at the house by mistake. The maidservant gave them up without inquiring as to his identity or asking for a receipt. Neither the boxes nor their contents were ever heard of again. The plaintiff claimed on the ground that the defendants had not exercised reasonable care as bailees, or alternatively that they had broken a contract to buy or return the goods. The plaintiff failed to prove any request by the defendant for the goods to be sent, except as to one article, in respect of which the defendants paid money into Court with a denial of liability.

**HELD**—that the defendants had not shown such negligence as to render them liable for the goods not expressly ordered, but that the plaintiffs were entitled to the amount paid into Court in respect of the one article which the defendants had requested them to send.

*BATISTONI v. DANCE AND ANOTHER*, *Times*, [January 18th, 1908—Channell, J.]

**III. LIABILITY OF BAILOR.**

[No paragraphs in this vol. of the Digest.]

**BAKER.**

See **FOOD AND DRUGS**.

**BAKEHOUSES.**

See **FACTORIES AND WORKSHOPS**;  
**LANDLORD AND TENANT**.

**BALLOT.**

See **ELECTIONS**.

**BANKERS AND BANKING.**

	COL.
I. APPROPRIATION OF PAYMENTS	24
II. CHEQUES	24
III. IN GENERAL	26
[No paragraphs in this vol. of the Digest.]	
IV. BANK OF ENGLAND	26

See also **MONEY AND MONEYLENDERS**.

**I. APPROPRIATION OF PAYMENTS.**

1. *Banking Account—Interpleader—Proceeds of Larceny—Rule in Clayton's Case—Rule in Hallett's Case.*—The plaintiffs claimed the sum of £392 standing in the defendants' name at the Birkbeck Bank on the ground that it was the proceeds of extensive larcenies of metal from a dockyard by the defendant's husband, for which he had been convicted.

Neither the defendant nor her husband had a banking account before the thefts began. The account was originally opened in their joint names and had been since transferred to the Birkbeck Bank in the sole name of the defendant. The total payments amounted to £556, of which all except about £119, paid in cash, could be identified as proceeds of payments in the forms of cheques or notes by D. to the defendant's husband, on account of the stolen metal.

**HELD**—that the rule in *Re Hallett, Knatchbull v. Hallett* (13 Ch. Div. 696) must be applied so that the plaintiffs had a charge upon the account for the amount identified as belonging to them and wrongfully put into the account, and that as that amount exceeded the balance remaining, the plaintiffs were entitled to the whole of the latter.

Rule in *Clayton's Case* (1 Mer. 572) not applied.

*THE ADMIRALTY v. MILLS*, *Times*, October 29th, [1908—Channell, J.]

See also **MONEY AND MONEYLENDERS**.

**II. CHEQUES.**

2. *Countermand of Payment—Countermand by Telegram—Telegram placed in Bank's Letter Box—Telegram Overlooked—Notice—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 75.*—A bank may reasonably postpone payment of a cheque on receipt of a telegram from the drawer in order to make inquiries; but, *semble*, it is not in law bound to accept an unauthenticated telegram as sufficient authority to refuse payment.

A cheque drawn upon the defendants' bank was given by the plaintiff on October 31st to a third person. Upon the same day the plaintiff, after banking hours, sent a telegram to the bank countermanding payment of the cheque. The bank being closed, the telegram was put into the bank letter-box. On the next morning, November 1st, the bank cashier, when clearing the letter box, by some accident left the telegram lying in the box, where it remained until the following morning, November 2nd, when it was

**Cheques—Continued.**

opened. In the meantime the cheque was presented for payment on November 1st, and was paid. In an action by the plaintiff to recover the sum so paid away as money had and received:—

**HELD**—that, though the bank might be liable to the plaintiff in an action for negligence, there was in fact no countermand of payment, and the plaintiff could not recover in the present action.

Decision of Div. Ct. (23 T. L. R. 594) reversed.

**CURTICE v. LONDON CITY AND MIDLAND BANK,**  
[[1908] 1 K. B. 293; 77 L. J. K. B. 341; 98 L. T. 190; 24 T. L. R. 176—C. A.]

**3. Forged Indorsement—Payee—"Fictitious Person"—Belief or Intention of Drawer—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 7, sub-s. 3.]**—A payee is not a "fictitious person" within sect. 7 (3) of the Bills of Exchange Act, 1882, if he is a real person intended by the drawer to receive payment.

W. falsely represented to the plaintiff that he had agreed to purchase from K. (an existing person) certain shares and had arranged to resell the shares at a profit. The plaintiff was thereby induced to assist him in financing the transaction, and for this purpose drew a cheque payable to K. or order for the amount of the purchase-money. This cheque he delivered to W. with instructions to hand it to K. in payment for the shares. W. forged K.'s indorsement to the cheque and paid it into his own account with the defendant bank, who credited him with the amount, and collected the money from the plaintiff's bank. W. had not agreed to buy any shares from K., and K. had at the time no shares in the company. In an action by the plaintiff against the defendant bank for the conversion of the cheque:—

**HELD**—that, as K. was an existing person designated by the plaintiff and intended by him to be the payee of the cheque, the payee was not a "fictitious person" within sect. 7, sub-sect. 3, of the Bills of Exchange Act, 1882, and that the defendant bank was liable to pay to the plaintiff the amount of the cheque.

Decision of C. A. ([1908] 1 K. B. 13; 77 L. J. K. B. 19; 97 L. T. 677; 24 T. L. R. 5; 13 Com. Cas. 69) affirmed.

**MACBETH v. NORTH AND SOUTH WALES BANK;**  
[**IRVINE v. NORTH AND SOUTH WALES BANK**  
[1908] A. C. 137; 77 L. J. K. B. 464; 98 L. T. 470; 24 T. L. R. 397; 13 Com. Cas. 219; 52 Sol. Jo. 353, 354—H. L.]

**4. Taking Dishonoured Cheque—Defect in Title—Notice that it was Dishonoured—Accommodation Cheque—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 27, 29, 36.]**—One Cooper owed to the plaintiff, who was a stockbroker, £115 in respect of dealings in stocks and shares. In order to provide funds to meet this debt the defendant, at Cooper's request, drew a cheque for £115 payable to Cooper or order, which Cooper was to pay into his bank to meet his cheque for the same amount which he drew at the same time in favour of the plaintiff. Cooper indorsed

the cheque drawn by the defendant and paid it into his bank, and handed his own cheque to the plaintiff. The defendant changed his mind and stopped his cheque, and thereupon Cooper handed it to the plaintiff, who had notice that it had been dishonoured. In an action by the plaintiff against the defendant on the cheque:—

**HELD**—that as the cheque was an accommodation bill, and as the plaintiff, even assuming that he gave consideration for it, was not a holder in due course, inasmuch as he took the cheque with notice that it had been dishonoured, he took it subject to any defect of title attaching to it at the time of dishonour, and as Cooper negotiated it to the plaintiff in breach of faith instead of paying it into his bank, there was a defect of title attaching to it within s. 29 of the Bills of Exchange Act, 1882, and the plaintiff was not entitled to recover.

**HORNBY v. McLAREN AND ANOTHER,** 24 T. L. R. [494—C. A.]

**III. IN GENERAL.**

[No paragraphs in this vol. of the Digest.]

**IV. BANK OF ENGLAND.**

**5. Charging Order Absolute—Contingent Equitable Interest of Judgment Debtor—Government Stocks and Bank of England Stock—Notice of Order to the Bank—Effect upon the Legal Interest—Transfer at the Direction of the Trustee in Whose Name the Stock is Standing—Duty of the Bank to Transfer Notwithstanding the Charging Order—Notice in Lieu of Distringas.]**—Where a judgment creditor has obtained a charging order absolute upon the contingent equitable interest of a judgment debtor in Government and Bank of England Stock, standing in the name of a trustee, the Bank is compellable to transfer the respective stocks at the direction of the trustee, notwithstanding that notice of the charging order has been served upon the Bank. The judgment creditor can protect his rights by giving notice to the trustee and by issuing a notice in lieu of distringas upon the Bank.

**ADAM v. BANK OF ENGLAND,** 52 Sol. Jo. 682—[Joyce, J.]

**6. Transfer of Stock—Court appointing Person to Execute—Indemnity to Bank—Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 14—National Debt Act, 1870 (33 & 34 Vict. c. 71), ss. 22, 66.]**—S. took Chancery proceedings to enforce a charging order which he had obtained against consols standing in the names of J. and R., his judgment debtors. The Court ordered S. to sell some of the stock, ordered J. and R. to transfer to S. the stock to be sold, and ordered the Court's brokers to execute the transfer if they omitted to do so.

Upon various objections by the Bank of England, who desired further protection:—

**HELD**—(1) That the Bank was impliedly protected by the Court's order, and that S. should not be required to indemnify the Bank against the possibility of the order having been invalidly made;

(2) That the title of the proceedings need not be changed so as to refer to the Judicature Act,

**Bank of England—Continued.**

1884, but that the order might state that it was made under s. 14 thereof; and

(3) That in such cases the Court will not as a rule appoint a person to execute a transfer until the owner of the stock has failed (or said that he will refuse) to execute it.

Form of order.

SAVAGE v. NORTON, [1908] 1 Ch. 290; 77 L. J. [Ch. 198; 98 L. T. 382—Parker, J.

7. *Transfer of Stock—Forged Transfer—Request to Bank of England to Transfer—Stockbroker identifying Transferor—Liability of Stockbroker—Damages, Measure of.*—A stockbroker, acting *bonâ fide*, filled in a form containing particulars of the name of a person alleged to be desirous of transferring certain India stock standing in her name in the books of the Bank of England, and of the amount of the stock, and sent the form to the Bank, from which form the Bank prepared the transfer in their books, and later in the day he attended himself with the supposed transferor and identified her to the Bank officials. The stockbroker was on the Bank's list of persons who were entitled to identify transferors of stock, and he was paid for the transaction by the transferor, and not by the Bank. The supposed transferor thereupon signed a transfer of the stock in the books of the Bank in the name of the owner thereof, and the stock was subsequently transferred to purchasers for value in reliance upon the genuineness of the transfer. In fact, the signature of the owner of the stock was forged, and she had not authorised the transfer, and the Bank, upon discovering the fraud, purchased an equivalent amount of stock in the market, so as to replace the stock fraudulently transferred. In an action by the Bank against the stockbroker, who admittedly acted in good faith and was misled as to the identity of the transferor, to recover the sum paid in order to replace the stock:—

HELD, by Farwell and Kennedy, L. JJ., Vaughan Williams, L. J., dissenting—that the defendant, by taking the form giving particulars of the stock and the name of the transferor to the Bank, and identifying the transferor as the owner thereof, thereby requested the Bank to perform a ministerial statutory duty, namely, to permit the transferor to make the transfer, and he thereby contracted to indemnify the Bank against the loss caused thereby.

*Sheffield Corporation v. Barclay* ([1905] A. C. 392; 74 L. J. K. B. 747; 69 J. P. 385; 54 W. R. 49; 93 L. T. 83; 21 T. L. R. 642—H. L.) followed.

HELD ALSO—that as the Bank was estopped from denying the validity of the transfers to the purchasers for value without notice, and was unable to create stock in order to replace the stock fraudulently transferred, it was bound to purchase stock upon the market for that purpose, and was entitled to recover from the defendant the amount paid for the purchase of such stock.

Decision of A. T. Lawrence, J., [1907] 1 K. B.

889; 76 L. J. K. B. 504; 96 L. T. 636; 23 T. L. R. 374), affirmed.

BANK OF ENGLAND v. CUTLER, [1908] 2 K. B. [208; 77 L. J. K. B. 889; 98 L. T. 336; 24 T. L. R. 518; 52 Sol. Jo. 442—C. A.

## BANKRUPTCY AND INSOLVENCY.

	COL.
I. MISCELLANEOUS . . . . .	28
II. ACT OF BANKRUPTCY . . . . .	29
[No paragraphs in this vol. of the Digest.]	
III. ADMINISTRATION OF BANKRUPT'S PROPERTY . . . . .	29
IV. ANNULMENT OF PROCEEDINGS . . . . .	29
V. BANKRUPTCY NOTICE . . . . .	30
VI. COUNTY COURTS . . . . .	31
[No paragraphs in this vol. of the Digest.]	
VII. DEED OF ARRANGEMENT . . . . .	31
VIII. DISCHARGE . . . . .	32
IX. DIVIDENDS . . . . .	32
X. FRAUDULENT PREFERENCE . . . . .	33
XI. INTERIM RECEIVER . . . . .	33
[No paragraphs in this vol. of the Digest.]	
XII. OFFENCES . . . . .	33
[No paragraphs in this vol. of the Digest.]	
XIII. PETITION . . . . .	33
XIV. PRACTICE . . . . .	33
XV. PRIORITIES . . . . .	35
[No paragraphs in this vol. of the Digest.]	
XVI. PROOF OF DEBTS . . . . .	35
XVII. PROPERTY OF BANKRUPT.	
(a) Generally . . . . .	37
(b) Order and Disposition . . . . .	38
[No paragraphs in this vol. of the Digest.]	
(c) Undischarged Bankrupt—After- acquired Property . . . . .	38
[No paragraphs in this vol. of the Digest.]	
XVIII. RECEIVING ORDER . . . . .	38
XIX. SCHEME OF ARRANGEMENT . . . . .	38
[No paragraphs in this vol. of the Digest.]	
XX. SET-OFF . . . . .	38
XXI. TRUSTEE . . . . .	39
XXII. VOLUNTARY ASSIGNMENTS . . . . .	39

See also BILLS OF SALE, No. 4; EXECUTORS, No. 19; FRAUDULENT AND VOID CONVEYANCES; HUSBAND AND WIFE, No. 12; LANDLORD AND TENANT.

### 1. MISCELLANEOUS.

1. *Action against Bankrupt—Trustee added as Defendant but not Appearing—Costs.*—Where a defendant becomes bankrupt, and his trustee is added as defendant, but enters no appearance, he will not be made personally liable for costs.

DANSK, ETC., AKTIESELSKAB v. SNELL, [1908] [2 Ch. 127; 77 L. J. Ch. 352; 98 L. T. 830; 24 T. L. R. 395; 15 Manson, 134—Neville, J.



**Miscellaneous—Continued.**

**2. Action by Creditor Already Commenced—Effect of Receiving Order—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 9 (1).**—Sect. 9 (1) of the Bankruptcy Act 1883, to the effect that after a receiving order has been made the creditor has no further remedy against the person or property of the debtor, does not refer to actions already commenced at the time when the receiving order was made, though it will prevent the creditor issuing execution on his judgment.

COHEN *v.* REBOW, *Times*, April 13th, 1908—  
[Grantham, J.]

**3. Commencement of Bankruptcy—Distress for Rent on Day of Adjudication—Priority—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 42, 43.**—A debtor presented his petition on October 23rd, at 12.50 p.m., and consented at the same time to the making of a receiving order and immediate order of adjudication. On the same day his landlord distrained.

HELD—that by reason of sect. 43 of the Bankruptcy Act, 1883, the bankruptcy “commenced” at the actual hour when he presented his petition, although but for that section the order of adjudication, being a judicial act, would have operated from the first moment of the same day.

IN RE BUMPUS, EX PARTE WHITE, [1908]  
[2 K. B. 330; 77 L. J. K. B. 563; 98 L. T. 680; 52 Sol. Jo. 395; 15 Manson, 103—  
Bigham, J.]

**II. ACT OF BANKRUPTCY.**

[No paragraphs in this vol. of the Digest.]

**III. ADMINISTRATION OF BANKRUPT PROPERTY.**

*And see XVII., infra.*

**4. Compromise of Mutual Claims—Application to Court to sanction Compromise—Acceptance of Shares in a Limited Company by Trustee—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 57, 89.**—The Court authorised a compromise of mutual claims by which the trustee in bankruptcy received fully-paid shares in a limited company.

RE MACFADYEN, EX PARTE GLASS, 98 L. T. [55; [1908] W. N. 13—Phillimore, J.]

**5. Distribution of Assets—Bankruptcy in both England and India—Arrangement to pool Assets—Jurisdiction of Court to Sanction.**—A firm having creditors and assets both in England and India was declared bankrupt in both countries. An arrangement was proposed to pool all the assets for the benefit of all the creditors.

HELD—that the Court would assume jurisdiction to sanction the scheme.

IN RE MACFADYEN & CO., EX PARTE [VIZIANAGARAM CO., LD., [1908] 1 K. B. 675; 77 L. J. K. B. 319; 98 L. T. 220; 24 T. L. R. 254; 52 Sol. Jo. 226; 15 Manson, 28—  
Bigham, J.]

**IV. ANNULMENT OF PROCEEDINGS.**

*See No. 23, infra.*

**V. BANKRUPTCY NOTICE.**

**6. County Court Judgment—Form of Notice—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 105—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g)—Bankruptcy Rules, 1886, r. 136; Appendix, Form 6.**—The petitioning creditor had obtained a judgment against the debtor in a county court for a sum exceeding £20, the judgment ordering the debtor to pay the amount to the Registrar of the Court. The debtor did not pay, and the creditor served a bankruptcy notice upon him in the form specified in the Bankruptcy Rules, 1886, Appendix, Form 6, requiring him to pay the amount due on the judgment to the creditor. Upon a petition founded upon non-compliance with the bankruptcy notice:—

HELD—that the notice was bad, as it did not require the creditor to pay the judgment debt in accordance with the terms of the judgment within the meaning of sect. 4, sub-sect. 1 (g), of the Bankruptcy Act, 1883. The proper course is to mould the form of bankruptcy notice to meet the case of a county court judgment. It must also state the creditor's address.

IN RE A DEBTOR, EX PARTE THE PETITIONING CREDITOR, [1908] 2 K. B. 692; 77 L. J. K. B. 998; 99 L. T. 461; 24 T. L. R. 777; 52 Sol. Jo. 641—C. A.]

**7. Formal Defect or Irregularity—Notice claiming More than Due—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g), s. 143.**—A bankruptcy notice required the debtor to pay the creditor a sum of £984 7s. 1d., as being the balance due upon final judgment obtained against the debtor. This sum was £1 5s. 6d. in excess of what was actually due, by reason of the amount of the interest due being overstated.

HELD—that the bankruptcy notice was bad, and that the defect was not a formal defect or irregularity within the meaning of s. 143 of the Bankruptcy Act, 1883, which the Court would amend, and that the notice was bad.

*In re Bates* ((1887) 4 Morr. 192) considered.

IN RE A DEBTOR, EX PARTE THE DEBTOR, [1908] 2 K. B. 684; 77 L. J. K. B. 981; 99 L. T. 458; 24 T. L. R. 778; 52 Sol. Jo. 641—  
C. A.]

**8. Judgment Debt—Bill of Exchange Accepted—Conditional Payment—Bill Dishonoured—Outstanding in Hands of Holder for Value—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4 (i) (g).**—If a judgment creditor accepts from his debtor a bill of exchange for the amount of the judgment debt, he thereby impliedly agrees not to enforce the debt during the currency of the bill, or even after its dishonour, if it is outstanding in the hands of a third person to whom he has indorsed it for value; and, so long as he is thus under an implied agreement not to enforce the debt, he cannot make it the foundation of an effective bankruptcy notice under sect. 4 (i) (g) of the Bankruptcy Act, 1883.

IN RE A DEBTOR, EX PARTE THE DEBTOR, [1908] 1 K. B. 344; 77 L. J. K. B. 409; 98 L. T. 652; 52 Sol. Jo. 174; 15 Manson, 1—C. A.]



**Bankruptcy Notice—Continued.**

9. *Notice not in Accordance with Judgment—Joint Debt—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).]—Judgment was obtained against the debtor for a sum of money by "William Paye and William Skipp, trading as the Hertingfordbury Brick Company," and a bankruptcy notice was issued, headed "*Ex parte* William Paye and William Skipp, trading as the Hertingfordbury Brick Company," and requiring the judgment debtor to pay to "William Paye, of Oak Villa, Enfield Highway, in the County of Middlesex, and William Skipp, of Hope House, Ware, in the County of Herts," the amount of the judgment debt, or secure or compound for the same, "or you must satisfy the Court that you have a counter-claim, set-off, or cross-demand against the said William Paye and William Skipp, trading as the Hertingfordbury Brick Company . . ."

HELD, by Cozens-Hardy, M. R., and Kennedy, L. J. (Buckley, L. J., dissenting)—that the bankruptcy notice was invalid and must be set aside, as it required the judgment debtor to pay the judgment debt to two individuals, the judgment having been obtained by them as partners.

IN RE A JUDGMENT DEBTOR, EX PARTE THE [JUDGMENT CREDITORS, [1908] 2 K. B. 474; 77 L. J. K. B. 968; 99 L. T. 126; 24 T. L. R. 689; 52 Sol. Jo. 567; 15 Manson, 209—C. A.

**VI. COUNTY COURTS.**

[No paragraphs in this vol. of the Digest.]

**VII. DEED OF ARRANGEMENT.**

9a. *Assignment for Benefit of Creditors—Alleged Acquiescence by Petitioning Creditor—Trustee ordering Goods—Execution of Order for Cash—Notice of Execution of Deed.*]—At a meeting of creditors the representative of C. & Co. refused to have anything to do with a deed of assignment for the benefit of creditors. After he left the room, a deed was signed. On the same day the trustee under the deed, writing "as trustee of the estate" sent a small order to C. & Co., who by return of post sent an invoice saying that the goods were "ready awaiting remittance." After having received a cheque, but before they sent off the goods, they were informed of the execution of the deed.

HELD—that C. & Co. were not estopped from relying on the execution of the deed as an act of bankruptcy, for the order did not necessarily convey to them that a deed had been signed, and the transaction was completed on receipt of the cheque before they in fact got specific notice of the deed.

IN RE CROW, EX PARTE COLLIER & Co., 97 [L. T. 140; 14 Manson, 279—Div. Ct.

9b. *Death of Partner—New Firm—Assignment for Benefit of Creditors—Proof by Deceased Partner's Executors—Competition with Creditor of New Firm.*]—A debt due in respect of capital to the estate of a deceased partner in a business carried on by two partners was on the formation of a new partnership to take over the business treated as a debt of the

new partnership, and interest was paid thereon. Afterwards the new firm executed an assignment for the benefit of their creditors. A dividend was paid to creditors exclusive of the deceased's estate. The question was whether the executors of the deceased were entitled to prove against the assigned estate after, *pari passu* with, or in priority to the trade creditors.

HELD—that when the old partnership ceased its creditors could have sued the surviving partner separately, or proceeded against the deceased's estate; that the new firm became liable to indemnify the deceased's estate, but that there was not any initial joint liability of the old and new firms to the creditors of the new firm; and that the executors could therefore prove *pari passu* with the creditors of the new firm.

IN RE BERGEL AND JOSEPH, PEARS v. BERGEL, [126 L. T. Jo. 79—Eve, J.

**VIII. DISCHARGE.**

10. *Assets not equal to 10s. in the £—Burden of Proof—Official Receiver's Report—Bankruptcy Act, 1890* (53 & 54 Vict. c. 71), s. 8.]—Upon an application by a bankrupt for an order of discharge the *onus* lies upon the person opposing the discharge to prove facts which entitle the Court under sect. 8, sub-sects. 2, 3, of the Bankruptcy Act, 1890, to refuse or suspend the discharge. The Official Receiver's report is, however, by sub-sect. 5, made *prima facie* evidence, if there is any definite finding therein.

IN RE VAN LAUN, EX PARTE THE INTER- [NATIONAL ASSETS Co., LD., 23 T. L. R. 371; 14 Manson, 281—C. A.

11. *Conditions—Suspension for Time and until a Specified Dividend has been Paid—Jurisdiction—Bankruptcy Act, 1890* (53 & 54 Vict. c. 71), s. 8 (2) (3).]—There is no jurisdiction to suspend an order of discharge till two conditions have been fulfilled, one of time and one of payment.

RE WALMSLEY, EX PARTE THE BANKRUPT, [98 L. T. 55; 52 Sol. Jo. 192—Div. Ct.

12. *Solicitor Engaging in Hazardous Speculation.*]—Per Cozens-Hardy, M. R.—In the case of a solicitor who has engaged in hazardous speculation and incurred large debts with small assets, and who has been made a bankrupt, the Court ought to be slow in granting him a discharge which would remove him from a position in which it may be the duty of the Law Society, in the first instance, or the Master of the Rolls, in the last resort, to say that he ought not to be allowed to practise as a solicitor.

IN RE DALZELL, 25 T. L. R. 9—C. A.

**IX. DIVIDENDS.**

13. *Retainer of by Trustee—Set-off—Costs owing by Creditor—Assignment of Debt—Right of Assignee.*]—The creditor of a bankrupt lodged a proof against the estate, and this proof was rejected by the trustee. The Judge upon

**Dividends—Continued.**

appeal affirmed the rejection. The creditor appealed to the Court of Appeal, and assigned to her solicitors whatever sums she might become entitled to receive out of the bankrupt's estate. The appeal was dismissed, but without prejudice to a fresh proof being sent in. The solicitors lodged a fresh proof, and the trustee in bankruptcy claimed to retain the dividend on the proof against the taxed costs of the appeals due to him from the creditor.

HELD—that he was entitled to do so.

IN RE MAYNE, EX PARTE OFFICIAL RECEIVER, [1907] 2 K. B. 899; 76 L. J. K. B. 1086; 97 L. T. 644; 23 T. L. R. 758; 14 Manson, 261—Bigham, J.

**X. FRAUDULENT PREFERENCE.**

14. *Shipment of Goods and Despatch of Bill of Lading—Purchaser becoming Insolvent—Re-transfer of Bill of Lading under Pressure—Stoppage in transitu—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 48 (1)—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 44, 45, 46.*—Merchants supplied goods on credit to J., and after shipping them forwarded to him the bill of lading. While the goods were at sea, J. became unable to pay his debts as they fell due, and on being pressed by the vendors retransferred to them the bill of lading.

HELD—that such retransfer was due to the pressure and was not an attempt to prefer.

*Seem*, if it had been an attempt to prefer and therefore void, it would have been void for all purposes, and would not have defeated the vendor's right to stop the goods *in transitu*.

*Re O'Sullivan* ((1892) 66 L. T. 619) discussed.

RE JOHNSON, EX PARTE WRIGHT, 99 L. T. [305; 52 Sol. Jo. 622—Bigham, J.

**XI. INTERIM RECEIVER.**

[No paragraphs in this vol. of the Digest.]

**XII. OFFENCES.**

[No paragraphs in this vol. of the Digest.]

**XIII. PETITION.**

15. *Petitioning Creditor's Debt—Moneylender—Illegal Loan—Moneylenders Act, 1900 (63 & 64 Vict. c. 51), s. 2, sub-s. 1 (b), (c).*—A registered moneylender who carries on moneylending business otherwise than in his registered name or at his registered address, or enters into any agreement, or takes any security for money in the course of his business as a moneylender otherwise than in his registered name, cannot recover, or present a bankruptcy petition in respect of, money so lent.

RE A DEBTOR, EX PARTE CARDEN, 52 Sol. Jo. [209—C. A.

**XIV. PRACTICE.**

16. *Committal of Special Manager for Failing to File Accounts—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 12, 102, sub-s. 5—Bankruptcy Rules, 1886 and 1890, r. 344.*—The Court has jurisdiction, upon the application of the Board of

Y.D.

Trade, to make a four-day order for accounts upon a special manager appointed by an official receiver to manage a debtor's business.

RE JONES, [1908] 1 K. B. 204; 77 L. J. K. B. [139; 98 L. T. 56; 15 Manson, 31—Phillimore, J.

17. *Costs—Taxation—Small Bankruptcies—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 121—Bankruptcy Rules, 1886 and 1890, r. 112.*—During the course of a small bankruptcy the Official Receiver, as trustee, employed solicitors to obtain probate of the will of the bankrupt's wife. The Registrar of the county court taxed off two-fifths of the profit costs of the solicitors, holding that the steps taken to obtain probate were proceedings under the Bankruptcy Act within the terms of r. 112 of the Bankruptcy Rules, 1886 and 1890.

HELD—that the words "proceedings under the Act" must be strictly construed, and did not apply to proceedings taken outside the Bankruptcy Court.

RE WEIGHELL, EX PARTE TABER, 52 Sol. Jo. [728—Div. Ct.; affirmed 25 T. L. R. 62; 53 Sol. Jo. 63; [1908] W. N. 232—C. A.

18. *Enforcing Attendance of Witness for Private Examination—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 27, 142—Bankruptcy Rules, 1886 and 1890, rr. 62, 66, 71, 92; Forms 149, 152, 164, 165.*—A summons to secure a witness's attendance under sect. 27 of the Bankruptcy Act, 1883, may be served by registered post.

A "reasonable sum" for conduct money must be sent at the same time in cash or postal orders.

The form of warrant for arrest of a witness should be altered so as to admit of his detention in prison for a reasonable time pending the examination.

IN RE WEINBURG, EX PARTE OFFICIAL RECEIVER, 96 L. T. 790; 14 Manson, 277—Bigham, J.

19. *Notice of Rejection of Proof—Service at last known Place of Address—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52, s. 142).*—Where a trustee knows that a creditor whose proof he desires to reject has gone abroad, but does not know his address abroad, he may send notice of rejection of proof by registered post to the last known address of the creditor in England.

RE FOLLIOT, 97 L. T. 645—Phillimore, J.

20. *Set-off—Application to set aside Bankruptcy Notice—Petition—Set-off of Costs.*—Costs which form part of a petitioning creditor's debt cannot be set off against costs due from the creditor to the debtor.

Costs payable by a debtor on failing to set aside a bankruptcy notice can be set off against costs due to him on the ultimate dismissal of the creditor's petition.

IN RE S., EX PARTE PEAK HILL GOLDFIELD [LD. (OR, RE A DEBTOR, EX PARTE THE PETITIONING CREDITOR) [1907] 2 K. B. 896; 76 L. J. K. B. 1144; 97 L. T. 644; 14 Manson, 259—Bigham, J.



## XV. PRIORITIES.

[No paragraphs in this vol. of the Digest.]

## XVI. PROOF OF DEBTS

**21. Gaming Debt—New Consideration.**—In October, 1899, the bankrupt, an outside broker, lost a bet to a member of the Stock Exchange, and gave a bill for the amount due in March, 1900. The bankrupt was unable to meet the bill at maturity, and feared that if his position became known some large accounts which he had open on the Stock Exchange would be closed. He confided his fears to his creditor, and asked for his forbearance, in consideration for which he accepted a new bill at two months, dated March 7th, 1900. He failed to meet the new bill, and the creditor recovered judgment upon it, but took no further steps until the debtor became bankrupt, when he presented a proof against the estate.

**HELD**—that the debt was a gaming debt and not provable, for there was no evidence of any fresh consideration to take the second bill out of the operation of the Gaming Acts. To constitute such consideration there must be evidence of threats on the part of the creditor to do some lawful act. The mere fact that the debtor fears the consequences of not paying the debt is insufficient.

RE COMAR, EX PARTE RONALD, 52 Sol. Jo. [642—C. A.]

**22. Joint and Separate Proof—Breach of Trust by one Partner—Express Trustee—Director of Company and Member of Partnership—Misappropriation of Company's Assets—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), Sched. II., r. 18.**—Where one member of a firm, being an express trustee, wrongfully concurs in a misappropriation by the firm of the trust fund, proof may be allowed against both the joint estate of the firm and the separate estate of the defaulting trustee.

The fact that the trust fund properly came into the hands of the firm for a specific purpose makes no difference; neither does it make any difference that the trust was not express and that the partners had not originally possession of the trust fund.

The same principle applies wherever there is a fiduciary relationship resting upon contract, such as that of a promoter, agent, or director of a company.

*In re Parkers* ((1887) 19 Q. B. D. 84; 56 [L. J. Q. B. 338; 57 L. T. 198; 35 W. R. 566; 4 Manson, 35—Cave, J.] followed.

Decision of Bigham, J. (99 L. T. 306; 52 Sol. Jo. 623) reversed.

IN RE P. MACFADYEN, EX PARTE VIZIANA—[GARAM MINING 'Co., LD., [1908] 2 K. B. 817; 77 L. J. K. B. 1027; 52 Sol. Jo. 727—C. A.]

**23. Secured Creditor—Security Valued and Proof Admitted for Balance—Creditor Retaining Security—Composition—Annulment of Bankruptcy—Order Revesting Estate in Bankrupt—**

*Right of Bankrupt to Redeem—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 23, Sched. II., rr. 9–17.*—Where a secured creditor in a bankruptcy values his security and proves for the balance of his debt, after deducting the assessed value of the security, and the trustee in the bankruptcy does not elect to redeem the security or to have it realised, and a composition or scheme of arrangement is approved under s. 23 of the Bankruptcy Act, 1883, and an order is made annulling the bankruptcy and revesting the property in the bankrupt, the debtor can redeem the security upon paying the assessed value with interest from the date of the proof.

PEARCE v. BULLARD, KING & Co., [1908] 1 Ch. 780; 77 L. J. Ch. 340; 98 L. T. 527; 24 T. L. R. 353; 52 Sol. Jo. 301; 15 Manson, 88—Joyce, J.

**24. Secured Creditors—Shares in Ships—Vendor's Lien.**—*Quare*, whether in a bankruptcy a person can be regarded as a secured creditor who has sold, but not transferred, to the debtor shares in ships, and has a lien thereon for the purchase money.

PEARCE v. BULLARD, KING & Co., [1908] 1 Ch. [780; 77 L. J. Ch. 340; 98 L. T. 527; 24 T. L. R. 353; 52 Sol. Jo. 301; 15 Manson, 88—Joyce J.]

**25. Sham Sale by Debtor of his Business—Purchaser Paying Purchase Money—Sale Set Aside—Purchaser not allowed to Prove in respect of Money Paid by Him.**—M. having purchased a business, gave four promissory notes to the vendor, and procured his broker A. to join in making such notes as his surety. One note was paid by M. On M. getting into pecuniary difficulties A. agreed to buy the business and stock-in-trade, and by the terms of the agreement he took over in part payment of the purchase price the sole liability for the three outstanding notes. Upon M. becoming bankrupt shortly afterwards, his trustee obtained a judgment declaring the agreement and sale to be a sham and void. A. paid the notes and claimed to prove against M.'s estate for the amount as paid for a consideration which had wholly failed.

**HELD**—that as A. had paid the money in pursuance of a plan intended to defraud M.'s other creditors, the agreement was binding on A. so far as it was disadvantageous to him and was not binding on the other creditors so far as it was advantageous to him, and that, therefore, he could not prove.

*In re Cross* ((1848) 4 De G. & Sm. 364, n.) and *Ex parte Phillips* ((1888) 36 W. R. 567—C. A.) followed.

IN RE MYERS, EX PARTE MYERS, [1908] 1 [K. B. 941; 77 L. J. K. B. 386; 15 Manson, 85—Div. Ct.]

**26. Withdrawal—Moneylender—Jurisdiction to Reopen Transaction—Moneylenders Act, 1900 (63 & 64 Vict. c. 51), s. 1, sub-s. 3—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), Sched. I., r. 12.**—Where a proof is lodged by a creditor merely for voting purposes and has never been made use of

**Proof of Debts—Continued.**

either for voting or for claiming a dividend, it may be withdrawn by the creditor.

A proof was lodged by a moneylender, stating the value of a security which he held against his debt, and the proof was admitted for the purpose of voting at the first meeting of creditors. The creditor did not vote upon it, and he wrote to the trustee in bankruptcy that he intended to revalue it. The trustee thereupon wrote to the creditor requiring him, pursuant to rule 12 of Schedule I. to the Bankruptcy Act, 1883, to give up the security upon being paid the value and 20 per cent. extra. The creditor in reply wrote that he withdrew the proof. The trustee thereupon gave notice of motion to the Bankruptcy Court for an order that the creditor should deliver up the security upon being paid the above value and 20 per cent. extra, and that an account should be taken under the Moneylenders Act, 1900. The creditor then gave notice of motion for leave to amend his proof. The trustee's motion came on first, and the Court held that, as the creditor had withdrawn his proof, there was no proof before the Court, and therefore it had no jurisdiction to direct an account to be taken under the Moneylenders Act, 1900. The creditor then abandoned his motion.

HELD—that the creditor had a right to withdraw the proof, and that there being no proof before the Court, there was no jurisdiction to order an account to be taken under the Moneylenders Act, 1900; and that the fact that the creditor gave notice of motion to amend the proof did not confer jurisdiction, the motion being withdrawn.

IN RE ATTREE, EX PARTE WARD, [1907] 2 K. B. [868; 77 L. J. K. B. 130; 97 L. T. 641; 23 T. L. R. 734; 15 Manson, 9—Div. Ct.

**XVII. PROPERTY OF BANKRUPT.****(a) Generally.**

**27. Disclaimer of Lease of Plot of Land—Bankrupt having Mortgaged by Demise Portions of Plot—Order Vesting in Mortgagees whole Plot including Portion not Mortgaged—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 55, sub-s. 6.]**—The lessee of a plot of land mortgaged by sub-demise four portions of the plot to four different mortgagees, retaining the remainder of it. He subsequently became bankrupt, and his trustee in bankruptcy disclaimed the lease. A trustee for the four mortgagees (himself a solvent person) applied to a county court judge for an order vesting in him as such trustee all the rights, interest, and title of the bankrupt under the lease, including the portion of the plot not mortgaged, subject to the rent, covenants, and conditions contained in the lease. The county court judge made the order.

HELD—that the order was properly made.

IN RE HOLMES, EX PARTE ASHWORTH, [1908] [2 K. B. 812; 77 L. J. K. B. 1129; 52 Sol. Jo. 728—Div. Ct.

**28. Trust Property—Will—Gift to Executor and Trustee Absolutely—Unexpressed Trust—**

*Letter to be opened after Death—Bankruptcy of Legatee—Title of Trustee in Bankruptcy.*—A testatrix appointed B., her husband, executor and trustee of her will, which B. duly proved. The will gave B. certain property absolutely. About the time when the will was made B. promised the testatrix that if the property was left to him he would carry out certain wishes of the testatrix which she informed him were contained in a letter to be opened after her death. The letter directed certain specific gifts and that the rest, "after you have taken what you want," should be kept for the daughter-in-law of the testatrix. B., a bankrupt, now claimed to be entitled as trustee of the will to this property as against his trustee in bankruptcy.

HELD—without deciding that a valid trust was created, that the trustee in bankruptcy could not be allowed to take what the bankrupt honestly considered he held as trustee, but that as B. was entitled to keep what he wanted of the residue his trustee in bankruptcy could take what B. ought to want to satisfy his creditors.

IN RE BELL, EX PARTE THE DEBTOR, 126 L. T. Jo. [100—Bigham, J.

**(b) Order and Disposition.**

[No paragraphs in this vol. of the Digest.]

**(c) Undischarged Bankrupt—After-acquired Property.**

[No paragraphs in this vol. of the Digest.]

**XVIII. RECEIVING ORDER.**

**29. Appeal—Practice—Time for Entering Appeal—R. S. C., Ord. 58, r. 1—Bankruptcy Rules, 1886, rr. 130-2.]**—An appeal against a receiving order ought to be not merely served, but actually set down for hearing within the twenty-one days limited by rule 130.

In the particular case the time was extended upon terms, the appellant having misunderstood the effect of the rule.

IN RE TAYLOR, EX PARTE BOLTON, [1908] [W. N. 229; 25 T. L. R. 77—Bigham, J.

**XIX. SCHEME OF ARRANGEMENT.**

[No paragraphs in this vol. of the Digest.]

**XX. SET-OFF.**

*See also* **BILLS OF SALE, No. 4; EXECUTORS, No. 19.**

**31. Mutual Credits—Two Judgment Debts—Set-off—Solicitor's Lien—Estoppel.]**—In the Chancery Division and in the King's Bench Division a practice has been established that, where any person comes to the Court asking its aid to give effect to a judgment in any way, the Court will, if it can, protect the solicitor's lien for costs. Although there are decisions showing that this practice has not been followed in bankruptcy, it should be generally followed, for instance, in dealing with an appeal against a Judge's refusal to make absolute a garnishee order *nisi*. *Prima facie*, the rule laid down in *In re Bassett, Ex parte Lewis* ([1896] 1 Q. B. 219; 65 L. J. Q. B. 144; 73 L. T. 736; 44 W. R. 240)



**Set-Off—Continued.**

applies. But where in bankruptcy proceedings a solicitor has stood by and recognised a debt for costs due to his client as being something which the client was entitled to set off against another judgment debt independently of his own lien, he cannot be heard to say that a set-off ought not to be allowed because of his lien.

SCOTT v. PEAK HILL GOLDFIELDS, LD., BAR-CLAY & Co., LD., GARNISHEES, *Times*, November 16th, 1908—C. A.

**32. Mutual Dealings—Avoidance of Voluntary Settlement—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 38, 47.]**—A bankrupt within two years before his bankruptcy by a voluntary settlement transferred £250 to his wife. The trustee in the husband's bankruptcy obtained an order setting aside the voluntary settlement under sect. 47, sub-sect. 1, of the Bankruptcy Act, 1883, and brought an action against the wife to recover the £250. The wife claimed to set off, under sect. 38 of the Act, a debt due to her from the bankrupt and secured by a mortgage of certain property, the security being insufficient by more than £250 to repay the debt.

HELD, by Vaughan Williams and Buckley, L. JJ. (Fletcher Moulton, L. J., dissenting)—that, as the settlement was only avoided as against the trustee in the bankruptcy and not as against the husband, there was no debt due from the wife to the husband which could be made available for the purpose of a set-off under sect. 38, and that therefore the wife was not entitled to the set-off claimed.

LISTER v. HOOSON, [1908] 1 K. B. 174; 77 [L. J. K. B. 161; 98 L. T. 75; 24 T. L. R. 162; 15 Manson, 17—C. A.

**XXI. TRUSTEE.**

**33. Right of Trustee to have Vouchers handed over by Former Agents of Bankrupt.]**—A firm of solicitors acting for A. in 1904 made payments out of his moneys, A. being adjudicated bankrupt in 1907.

HELD—that the firm must deliver the vouchers for such payments to his trustee.

RE ELLIS AND ELLIS, 25 T. L. R. 38; 53 Sol. [Jo. 32; [1908] W. N. 215—Neville, J.

**XXII. VOLUNTARY ASSIGNMENTS.**

**34. Settlement—Post-Nuptial Settlement—Husband Declaring Himself Trustee for Wife and Children—No Actual Transfer—Interest of Settlor passing—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47, sub-s. 1.]**—A married man by a deed executed more than two and within ten years before his bankruptcy declared that he or other the trustee of the deed would stand seised of certain of his real property upon trust for sale and to hold the proceeds when invested upon trust for his wife and children, and until sale the rents and profits of the property were to be applied upon the same trusts. At the date of the deed the husband was able to pay all his debts without the aid of the property in question.

HELD—that, though there was no actual transfer of the legal estate, the declaration of trust was sufficient to pass the interest of the settlor within the meaning of sect. 47, sub-sect. 1, of the Bankruptcy Act, 1883, and that therefore the settlement was valid as against the trustee in bankruptcy of the settlor.

SHRAGER AND ANOTHER v. MARCH, [1908] [A. C. 402; 77 L. J. P. C. 105; 99 L. T. 33; 24 T. L. R. 641; 52 Sol. Jo. 580—P. C.

**35. Settlement—"Purchaser" for Valuable Consideration—Wife refraining from taking Proceedings for Divorce—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47.]**—A husband, in consideration of his wife, who was *bonâ fide* threatening to take proceedings against him for divorce, refraining from taking the proceedings, agreed to and did settle certain property upon her. The husband became bankrupt within two years after the date of the settlement.

HELD, by Cozens-Hardy, M. R., and Fletcher Moulton, L. J. (Buckley, L. J., dissenting)—that the wife was a "purchaser for valuable consideration" within the meaning of sect. 47 of the Bankruptcy Act, 1883, and that the settlement was valid. *Per* Cozens-Hardy, M. R., and Fletcher Moulton, L. J.: The release of a right or the compromise of a claim, not being a colourable right or claim, may suffice to constitute a person a "purchaser for valuable consideration" within the meaning of sect. 47. *Per* Buckley, L. J.: A "purchaser for valuable consideration" within sect. 47 must be a person who gives such a valuable consideration as justifies his being described as a purchaser or buyer, and that is only satisfied when the valuable consideration is money or property, or something capable of being measured by money. It does not extend to the surrender of such a right as the right to relief for matrimonial offences.

IN RE POPE, EX PARTE DICKSEE, [1908] 2 [K. B. 169; 77 L. J. K. B. 767; 98 L. T. 775; 24 T. L. R. 556; 52 Sol. Jo. 458; 15 Manson, 201—C. A.

*See also* No. 32, *supra*.

**BARRATRY.**

*See* CRIMINAL LAW; SHIPPING AND NAVIGATION.

**BARRISTERS.**

*And see* COUNTY COURTS; CROWN PRACTICE; DEPENDENCIES AND COLONIES; PRACTICE AND PROCEDURE.

**1. Three Counsel—Taxing Master's Discretion—R. S. C., Ord. 65, r. 27 (9, 29).]**—The costs of three counsel ought not to be allowed except in a case of special complication, and in judging whether there is such complication the Court will take into consideration the length of time the case lasted and other matters. But neither length of time nor scientific evidence is in itself a

**Barristers—Continued.**

justification for the employment of three counsel.  
A qualifying fee to a witness for the purpose of procuring evidence may be allowed on taxation, even though the witness is not an expert or scientific witness.

ATT.-GEN. *v.* BIRMINGHAM, ETC., DRAINAGE  
[BOARD, 52 Sol. Jo. 855—Eve, J

**BASTARDY.**

- I. AFFILIATION PROCEEDINGS . . . 41
  - II. CUSTODY OF BASTARDS . . . 41  
[No paragraphs in this vol. of the Digest.]
  - III. LEGITIMACY . . . 41  
[No paragraphs in this vol. of the Digest.]
- And see* HUSBAND AND WIFE ; INFANTS.

**I. AFFILIATION PROCEEDINGS.**

1. *Affiliation Order—Death of Putative Father—Arrears of Maintenance Unpaid—Claim for Arrears against Putative Father's Estate—Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65), s. 4.*—Where an affiliation order has been made directing the putative father of an illegitimate child to pay a weekly sum to the mother for the maintenance of such child, and the father dies leaving arrears of the sum unpaid, the mother cannot recover such arrears or any accruing payments from the father's estate.

IN RE HARRINGTON ; WILDER *v.* TURNER,  
[1908] 2 Ch. 687 ; 72 J. P. 501 ; 25 T. L. R.  
3 ; 52 Sol. Jo. 855—Warrington, J.

2. *Corroboration—Scotch Law—What Sufficient.*—Opportunity alone will not amount to corroboration of an allegation of paternity unless it is of such a character as to bring in an element of suspicion, or unless it has a complexion put upon it by statements made by the man which are proved to be false.

DAWSON *v.* M'KENZIE, [1908] S. C. 648—Ct. of  
[Sess.

**II. CUSTODY OF BASTARDS.**

[No paragraphs in this vol. of the Digest.]

**III. LEGITIMACY.**

[No paragraphs in this vol. of the Digest.]

**BATHS AND WASH-  
HOUSES.**

*See* LOCAL GOVERNMENT.

**BATTERY.**

*See* CRIMINAL LAW ; TRESPASS.

**BECHUANALAND.**

*See* DEPENDENCIES AND COLONIES.

**BEER.**

*See* FOOD AND DRUGS.

**BEEES.**

*See* ANIMALS.

**BENCH WARRANTS.**

*See* CRIMINAL LAW AND PROCEDURE.

**BENEFICE.**

*See* ECCLESIASTICAL LAW.

**BENEFIT BUILDING  
SOCIETIES.**

*See* BUILDING SOCIETIES.

**BETTERMENT.**

*See* METROPOLIS.

**BETTING.**

*See* CRIMINAL LAW ; GAMING AND  
WAGERING ; INTOXICATING LIQUORS.

**BICYCLES.**

*See* CARRIERS ; HIGHWAYS ; STREET  
TRAFFIC.

**BILLS OF EXCHANGE,  
PROMISSORY NOTES,  
AND NEGOTIABLE  
INSTRUMENTS.**

*For* CHEQUES *see under* BANKERS AND  
BANKING.

- I. BILLS OF EXCHANGE . . . 42
  - II. PROMISSORY NOTES . . . 44
  - III. INSTRUMENTS NEGOTIABLE BY  
MERCANTILE USAGE . . . 44
- [No paragraphs in this vol. of the Digest.]

*See also* BANKRUPTCY, No. 8 ; COURTS,  
No. 1 ; EVIDENCE ; GAMING ; GUAR-  
ANTEE, No. 1.

**I. BILLS OF EXCHANGE.**

1. *Bill Accepted by Partners—Presumption as to Liability of Firm.*—When all the partners

**Bills of Exchange—Continued.**

constituting a firm accept a bill, there is a *prima facie* presumption that it is accepted for the purposes of the firm.

ROSSLAND CYCLE CO. v. M'CREADIE, [1907]  
[S. C. 1208—Ct. of Sess.]

2. *Bills of Limited Company—Unauthorised Acceptance of Bills by Director in Name of Company*—"Acting under the Authority of the Company"—*Companies Act, 1862* (25 & 26 Vict. c. 89), s. 47.]—Certain bills drawn on a limited company were accepted by T., one of its directors, without the knowledge or sanction of his co-directors. There was no consideration to the company for, and they received no part of the proceeds of, the bills. Among the objects of the company as defined by its memorandum were the drawing, making, accepting, indorsing, and discounting of bills and promissory notes, and by its articles of association the directors were authorised to delegate any of their powers to committees consisting of such member or members of their body as they thought fit. In an action on the bills by *bonâ fide* holders for value:—

HELD—that as T. had no authority in fact to accept the bills, he was not in accepting them "acting under the authority of the company" within the meaning of sect. 47 of the *Companies Act, 1862*, and, therefore, the company was not bound by his acceptances.

PREMIER INDUSTRIAL BANK, LD. v. J. AND W.  
[CRABTREE, LD., 25 T. L. R. 17—Pickford, J.]

3. *Indorsement as Surety—Bill signed in Blank by Debtor as Acceptor and indorsed by Surety—Subsequently filled in by Creditor—Not Complete and Regular—Liability of Indorser—Estoppel—Bills of Exchange Act, 1882* (45 & 46 Vict. c. 61), s. 20.]—The plaintiff was in the habit of selling goods to the defendant T., and the defendant S. agreed to be responsible for the price of the goods. The course of dealing was to be that T. should accept, and S. should indorse, a blank bill form and hand it to the plaintiff, who was to fill it up as a bill of exchange. In the case of two bills sued upon the plaintiff filled in his own name as drawer, and on one bill he signed his name as indorser above that of S., and on the other he signed his name as indorser below that of S. T. being unable to pay for the goods represented by these bills, the plaintiff sued S. upon the bills.

HELD—that, having regard to the agreement between the parties, S. could not set up the defence that the plaintiff was a previous indorser, nor the defence that when he indorsed the bills they were not complete and regular on the face of them.

Decision of Lawrence, J. ([1907] 2 K. B. 507; 76 L. J. K. B. 874; 97 L. T. 434; 23 T. L. R. 596) affirmed.

GLENIE v. BRUCE SMITH, [1908] 1 K. B. 263;  
[77 L. J. K. B. 193; 98 L. T. 515; 24 T. L. R. 177—C. A.]

4. *Validity—Absence of Drawer's Signature—Evidence of Debt.*]—A document in the form of a bill of exchange bearing no drawer's signature, but signed by the "acceptor," is not a bill of exchange in the statutory sense, but is evidence of a debt due from the acceptor to the executors of the person to whom he delivered it.

LAWSON'S EXECUTORS v. WATSON, [1907] S. C.  
[1353—Ct. of Sess.]

**II. PROMISSORY NOTES.**

5. *Director of Company—Signature—Authority—Personal Liability.*]—The managing director of a company which had power to borrow on promissory notes, signed a promissory note, "J. H. Smethurst's Laundry and Dye Works, Ltd., J. H. Smethurst, Managing Director."

HELD—that the note must be treated as his note, since it did not sufficiently show that he signed it only as agent for the company.

CHAPMAN v. SMETHURST, [1908] W. N. 224—  
[Channell, J.]

6. *Blank Form of Note—Signed Paper—Paper handed to Person as Custodian—Fraudulent Issue of Note by Custodian—Estoppel.*]—The defendant, who was about to leave South Africa for England, handed to his agent two blank forms of promissory notes signed by him, telling him to keep them for him, and that as he might want to make certain payments in South Africa, if he sent instructions to that effect from England his agent was to fill them up as promissory notes and raise money upon them. The agent, without receiving instructions to that effect from the defendant, filled up the notes and discounted them with the plaintiff, who *bonâ fide* gave full value for them. The agent misappropriated the money. In an action upon the notes:—

HELD—that as the defendant entrusted the blank signed forms of promissory notes to his agent as a custodian only and not with the intention that he should fill them up and raise money upon them, he was not estopped from denying that he was liable on the notes.

*Lloyds Bank, Ltd. v. Cooke* ([1907] 1 K. B. 794; 76 L. J. K. B. 666; 96 L. T. 715; 23 T. L. R. 429—C. A.) distinguished.

SMITH v. PROSSER, [1907] 2 K. B. 735; 77 L. J.  
[K. B. 71; 97 L. T. 155; 23 T. L. R. 597—  
C. A.]

7. *Promissory Note—Stamp—Payable at Sight—Stamp Act, 1891* (54 & 55 Vict. c. 39), ss. 32, 33, *Sched. I.*]—The stamp required on a promissory note, whether payable at sight or on demand or otherwise, is an *ad valorem* one.

OETTINGER v. COHN, [1908] 1 K. B. 582; 77  
[L. J. K. B. 299; 98 L. T. 678; 24 T. L. R. 252  
—Channell, J.]

**III. INSTRUMENTS NEGOTIABLE BY MERCANTILE USAGE.**

[No paragraphs in this vol. of the Digest.]



## BILLS OF LADING.

For the construction of Bills of Lading,  
see SHIPPING AND NAVIGATION.  
See also BANKRUPTCY, No. 14.

1. *Indorsement of Bill of Lading to Agent—Special Property—Right to Possession as against Execution Creditor of Consignor—Intention.*—The effect of the indorsement of a bill of lading depends upon the intention of the parties. Accordingly, where a bill of lading is indorsed to an agent it confers no property in the goods, but only clothes the agent with authority to take possession for the consignees.

BURGOS *v.* NASCIMENTO, [1908] W. N. 237; 53 [Sol. Jo. 60—Eve, J.]

## BILLS OF SALE.

I. GENERALLY . . . . .	COL. 45
II. REGISTRATION . . . . .	47
III. SEIZURE . . . . .	47
[No paragraphs in this vol. of the Digest.]	
IV. STATUTORY FORM . . . . .	47
See also BANKRUPTCY; INSOLVENCY; INTERPLEADER; MORTGAGES, ETC	

### I. GENERALLY.

1. *Debenture—Issued by Company Registered in Guernsey—Bills of Sale Acts, 1878 (41 & 42 Vict. c. 31) and 1882 (45 & 46 Vict. c. 43), s. 17.*—Sect. 17 of the Bills of Sale Act, 1882, exempts from the operation of that Act and of the Bills of Sale Act, 1878, debentures of a limited company registered in Guernsey which create a floating charge on assets of the company.

CLARK *v.* BALM, HILL AND SONS, [1908] 1 K. B. [667; 77 L. J. K. B. 369; 15 Manson, 42—Phillimore, J.]

2. *Defeasance—Alteration in Mode of Paying Interest—Bills of Sale Acts, 1878 (41 & 42 Vict. c. 31), s. 10, sub-s. 3, and 1882 (45 & 46 Vict. c. 43), s. 8.*—By a bill, given as security for an advance with interest thereon at the rate of 60 per cent. per annum, the grantor agreed to repay the principal sum by equal weekly instalments of 5s. 9d., together with the interest then due, and in case of default in payment of any instalment of the principal sum it should continue to bear interest at the rate aforesaid. In order to avoid the difficulty of calculating the weekly amount of interest the parties agreed that the principal and interest should be paid off by weekly instalments of 9s. 3d. This arrangement was not embodied in the bill of sale or written on the same paper. It did not vary the aggregate amount payable by the borrower.

HELD—that this agreement was a defeasance within the meaning of s. 10, sub-s. 3, of the Bills of Sale Act, 1878, and that the bill of sale was void.

Reed *v.* Franks ((1900) 16 T. L. R. 347—Darling, J.) overruled.

PETTIT *v.* LODGE AND HARPER, [1908] 1 K. B. [744; 77 L. J. K. B. 413; 98 L. T. 771; 24 T. L. R. 329; 15 Manson, 136—C. A.]

3. *Defeasance—Mortgage to secure same Debt—Different Provisoes—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 10, sub-s. 3.*—A debtor gave a bill of sale over his household chattels to secure £1,000, and on the same day executed a mortgage of his leaseholds to secure the same loan. The mortgage contained provisos different from the terms of the bill of sale.

HELD—that the mortgage was not a defeasance or condition of the bill of sale, but an independent contract not requiring registration, and that the bill of sale was good.

RE LEBER, EX PARTE THE TRUSTEE, 52 Sol. Jo. [483—Bigham, J.]

4. *Licence to take Possession—Goods on Premises of Railway Company—Tenancy—Lien of Company for Sums due—Bankruptcy—Damages for Trespass and Causing Bankruptcy—Cause of Action not passing to Trustee—Mutual Dealings—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 4—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 38, 44.*—A railway company let to a coal merchant a certain piece of land at a rental for the purpose of stacking coal unloaded from trucks on the company's sidings. The land adjoined the railway sidings, and was within the company's yard, the gates of which were closed during certain hours of the night. By an agreement, spoken of as a "ledger agreement," between the company and the coal merchant, the latter agreed to pass over the company's railway a certain minimum quantity of coal each year, and the company agreed to open a monthly credit account for the carriage of coal upon condition that they should have a lien upon all waggons, goods, minerals, etc., conveyed on their line, or which should be at any time upon the railway or upon any ground rented from the company, for all rates and charges payable to the company, the latter to be at liberty to sell and dispose of any such waggons, goods, minerals, etc., in order to satisfy the lien; and the company reserved the right to close the account upon giving one day's notice of their intention to do so, whereupon the whole of the account was to become due. The account being in arrear, the company gave notice and closed the account, and took possession of the coal both on the land and in the trucks on the sidings. The coal merchant shortly afterwards was adjudicated bankrupt. His trustee in bankruptcy brought an action against the railway company to recover damages for wrongfully trespassing and seizing the goods, alleging that the agreement was a bill of sale, and was void for want of registration, and that the act of the company brought about the bankruptcy.

Phillimore, J., held (1) that the agreement was not a licence to take possession of goods within sect. 4 of the Bills of Sale Act, 1878, the company having already a certain degree of possession of the coal; and that therefore the agreement was



**Generally—Continued.**

not a bill of sale, and that the plaintiff could not recover; and (2) that if he could recover the company could not set off their claim for money due to them on the account.

**HELD**, by a majority of the C. A.—(1) that so far as it related to coal not in trucks, but on the demised land, the ledger agreement was a bill of sale, for the company's common law lien for carriage had ended in respect of that coal; and (2) that the company's claim could not be set off, it being a money claim, while the bankrupt's right at the date of the receiving order was a right to demand a return of the coal.

Decision of Phillimore, J. ([1908] 1 K. B. 195; 77 L. J. K. B. 140; 97 L. T. 760; 24 T. L. R. 83; 15 Manson, 33) reversed.

**LORD'S TRUSTEE v. G. E. RY. CO.**, [1908] 2 [K. B. 54; 77 L. J. K. B. 611; 98 L. T. 910; 24 T. L. R. 470; 52 Sol. Jo. 394; 15 Manson, 107—C. A.

Reversed on appeal, the H. L. holding that the agreement for a lien was not a bill of sale, 25 T. L. R. 176; 126 L. T. Jo. 141; 43 L. J. M. C. 772—H. L.

**II. REGISTRATION.**

**5. Affidavit—Occupation of Maker—Married Woman carrying on Separate Business—Described as "Wife of A. B."—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 10 (2)—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), ss. 8, 9.**—Where a married woman living with her husband, A. B., carries on a separate business, the question whether a description of her in the affidavit filed on registration as "the wife of A. B., of the same place, commission agent," is sufficient or insufficient so as to render the bill of sale bad is a question of degree, and the test to be applied is that laid down by Martin, B., in *Luckin v. Hamlyn* ((1869) 18 W. R. 43, 21 L. T. 366), where he says: "The word 'occupation' in this Act means the business in which a man is usually engaged to the knowledge of his neighbours. The intention is that such a description should be given that if inquiry be made in the place where the person resides he may be easily identified."

**NEVERSON v. SEYMOUR**, 97 L. T. 788; 52 Sol. [Jo. 12—Div. Ct.

**III. SEIZURE.**

[No paragraphs in this vol. of the Digest.]

**IV. STATUTORY FORM.**

**6. Provision for Payment of Insurance Moneys to Grantee—To be applied in Repayment.**—A provision for insurance of the chattels by the grantor of a bill of sale and a covenant by him to apply any insurance moneys received in discharge of the debt secured by the bill, does not avoid the bill as rendering uncertain the time of repayment.

**NEVERSON v. SEYMOUR**, 97 L. T. 788; 52 [Sol. Jo. 12—Div. Ct.

**BIRTH, PROOF OF.**

*See* EVIDENCE.

**BIRTHS, DEATHS & MARRIAGES (REGISTRATION OF).**

*See* EXECUTORS AND ADMINISTRATORS; HUSBAND AND WIFE; INFANTS; MEDICINE AND PHARMACY.

**BISHOPS.**

*See* ECCLESIASTICAL LAW.

**BLACKMAIL.**

*See* CRIMINAL LAW AND PROCEDURE.

**BLASPHEMY.**

*See* CRIMINAL LAW AND PROCEDURE.

**BOARDING-HOUSES.**

*See* INNS AND INNKEEPERS; LANDLORD AND TENANT.

**BONDS.**

[No paragraphs in this vol. of the Digest.]

*See also* BANKRUPTCY AND INSOLVENCY; BILLS OF EXCHANGE; DEEDS AND OTHER DOCUMENTS; EXECUTORS AND ADMINISTRATORS.

**BOOKS, ENTRIES IN.**

*See* BANKERS AND BANKING; DISCOVERY, ETC.; EVIDENCE.

**BOROUGH AUDITORS.**

*See* ELECTIONS.

**BOROUGHES.**

*See* LOCAL GOVERNMENT.

**BOTTOMRY.***See* SHIPPING AND NAVIGATION.**BOUGHT AND SOLD  
NOTES.***See* STOCK EXCHANGE.**BOUNDARIES AND  
FENCES.***See* EASEMENTS, No. 2.**BRANDY.***See* FOOD AND DRUGS.**BRAWLING.***See* CRIMINAL LAW ; ECCLESIASTICAL  
LAW.**BREACH OF PROMISE OF  
MARRIAGE.***See* CONFLICT OF LAWS ; HUSBAND AND  
WIFE.**BREACH OF THE PEACE.***See* CRIMINAL LAW AND PROCEDURE.**BREAD.***See* FACTORIES AND WORKSHOPS ; FOOD  
AND DRUGS.**BRIBERY.***See* AGENCY ; CRIMINAL LAW AND  
PROCEDURE ; ELECTIONS.**BRIDGES.***See* HIGHWAYS, STREETS AND BRIDGES.**BRITISH COLUMBIA.***See* DEPENDENCIES AND COLONIES.**BRITISH SOUTH AFRICA.***See* DEPENDENCIES AND COLONIES.**BROKERS.***See* AGENCY ; SALE OF GOODS ; STOCK  
EXCHANGE.**BROTHELS.***See* CRIMINAL LAW AND PROCEDURE.**BUILDERS, BUILDING CON-  
TRACTS, ENGINEERS  
AND ARCHITECTS.**COL.  
I. ARCHITECTS . . . . . 50

II. BUILDING CONTRACTS . . . . . 50

*See also* ARBITRATION.**I. ARCHITECTS.***See* LOCAL GOVERNMENT, No. 6.**II. BUILDING CONTRACTS.**

1. *Deviations—Effect of—Sewerage Work—Lump Sum Contract—Deviation Ordered by Corporation's Engineer—Right to Disregard Contract Price and Claim Quantum meruit—Absence of Seal—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 174.*—By a contract under seal a contractor undertook to execute works for a corporation at a fixed price. He alleged that the work had been so essentially varied under the orders of the corporation's engineer that he was entitled to disregard the fixed price and claim payment on the basis of the cost of the work, either under an implied new contract, or on the ground that the whole work was "extra work" executed in accordance with the provisions of the contract.

**HELD**—(1) that on the evidence there had been no essential variation justifying such a contention.

(2) That even if there had been such a variation he was not entitled to claim *quantum meruit* upon the basis of an implied new contract, because there was no contract under seal as required by s. 174 of the Public Health Act, 1875, and, further, because the engineer had no authority to order such a variation from the contract; and

(3) That so far as variations and extra work had been properly ordered by the engineer, the proper basis of payment was the contract sum, plus any difference in cost due to such variations or extras to be ascertained as provided for

**Building Contracts—Continued.**

by the contract, and the contractor could not reject the contract sum and claim to be paid on the basis of cost and expenses.

**BELL v. BRIDLINGTON CORPORATION**, 72 [J. P. 453—Off. Ref.]

**2. Fraudulent Representations by Employers**—*Representations not intended to be solely acted upon—Provision as to Verification by Contractor of Matters which could Influence Tender.*—In a contract to execute certain sewage works the plaintiffs covenanted to do the works described in the drawings and specifications according to the drawings, specifications, etc., and the defendants covenanted to pay for the works on the receipt of the certificate in writing of their engineer as provided by the conditions. The specification provided, *inter alia*, that the plaintiffs must verify all representations, and not rely upon their accuracy. On completion the plaintiffs claimed £36,574 from the defendants on the grounds—First, that the plans showed a certain existing wall extending nine feet below the Ordnance datum line which could be utilised for the purposes of the works; that this wall did not exist, and that consequently the plans of the works had been altered, and the plaintiffs, at the direction of the engineer, had completed the works at this extra cost. Secondly, that the defendants had fraudulently misrepresented the structure and existence of this wall, and had thereby induced the plaintiffs to enter into the contract to their detriment. The defendants relied on the absence of a certificate from their engineer and on the conditions of the specification, and they denied the making of any representation and any fraud.

**HELD**—that the specification only protected the defendants in respect of honest mistakes by themselves or their agents.

**Cornfoot v. Fowke** (6 L. J. Ex. 297; 6 M. & W. 358) explained.

Decision of C. A. ([1907] 2 I. R. 82) reversed.

**PEARSON v. DUBLIN CORPORATION**, [1907] [A. C. 351; [1907] 2 I. R. 537; 77 L. J. P. C. 1; 97 L. T. 645—H. L.]

**BUILDING SOCIETIES.****I. RULES.**

[No paragraphs in this vol. of the Digest.]

**II. WINDING-UP.**

[No paragraphs in this vol. of the Digest.]

**III. IN GENERAL.**

See **MORTGAGES**, No. 7.

**"BUILDINGS."**

See **MASTER AND SERVANT**; **METROPOLIS**.

**BURIAL AND CREMATION.**

I. BURIAL GROUNDS . . . .	COL. 52
II. CHURCHYARDS . . . .	53
[No paragraphs in this vol. of the Digest.]	
III. DISUSED BURIAL GROUNDS . . . .	53
[No paragraphs in this vol. of the Digest.]	
IV. EXHUMATION OF REMAINS . . . .	53
[No paragraphs in this vol. of the Digest.]	
See also <b>LOCAL GOVERNMENT</b> .	

**I. BURIAL GROUNDS.**

**1. Fees—Burial Ground of Ancient Ecclesiastical Parish—Fees Payable to Incumbent—Adjacent Parishes with Burial Grounds—Parishes United into One Civil Parish—United Parishes constituted One District for Purposes of the Burial Acts—“Fees other than for services rendered”**—*London Government Act, 1899* (62 & 63 Vict. c. 14), ss. 2, 4, 10, 15, 34—*Borough of Wandsworth (Adoptive Acts) Scheme, 1902*, ss. 1, 2—*Borough of Wandsworth (Union of Parishes) Scheme, 1903*, ss. 1, 2—*Burial Act, 1852* (15 & 16 Vict. c. 85), ss. 25, 32, 33, 37—*Burial Act, 1900* (63 & 64 Vict. c. 15), ss. 3, 12.]—At the date of the passing of the *Burial Act, 1900*, the plaintiff, as the incumbent of the ancient ecclesiastical parish of T. G., was entitled to fees for services rendered and fees other than for services rendered in respect of interments in the burial ground of the parish. The fees other than for services rendered were fees for breaking the ground, for erecting monuments, and for the sale and opening of vaults. The burial ground of the parish was the parish churchyard, to which the *Burial Acts* did not apply, and which is still in use. At the date of the passing of the said *Act* there were four adjacent parishes to which the *Burial Acts* applied, and three of them were provided with burial grounds under those *Acts*. By virtue of the provisions of the *London Government Act, 1899*, and of certain schemes confirmed by Orders in Council in 1902 and 1903, the parish of T. G. and the four adjacent parishes were united into one new civil parish, called the parish of W., and were constituted one district for all the purposes of the *Burial Acts*, the effect of which was to pool the burial grounds of the united parishes for the benefit of the inhabitants of the new parish of W. Under these circumstances the plaintiff claimed that, whenever an inhabitant of the parish of T. G. was interred in any one of the other burial grounds of the new parish of W., he was entitled, by virtue of the proviso in sect. 3 (4) of the *Burial Act, 1900*, to be paid fees other than for services rendered in respect of such interment.

**HELD**—that the proviso in sect. 3 (4) of the *Burial Act, 1900*, merely preserved rights already in existence at the date of the passing of the *Act*, and created no new rights, and therefore that the plaintiff was not entitled to the fees he claimed.

**ANDERSON v. WANDSWORTH BOROUGH COUNCIL**, [1908] 2 Ch. 81; 77 L. J. Ch. 462; 72 J. P. 289; 99 L. T. 151; 6 L. G. R. 866—Neville, J.



**Burial Grounds—Continued.**

2. *Highway Widening—Faculty to Throw Strip of Burial Ground into Public Way.*—An additional burial ground was purchased in 1811 under an Act of Parliament of the preceding year which declared that it should only be used as a burial ground. For the convenience and safety of the public, however, a faculty was granted for throwing a strip of the burial ground into a public way for the purpose of widening the road. Provisoes were inserted for the ground, in the event of its not being required hereafter for the public way, reverting to the vicar and churchwardens for the use of the church and for the reinterment in the burial ground if there was room, or, if not, in a cemetery, of any human remains that might be found.

RE HAMSTEAD ADDITIONAL BURIAL GROUND, [*Times*, May 21st, 1908.—Dr. Tristram, Consistory Court of London]

3. *Unconsecrated Portion let for Building—Rents—Benefit of Parish—Ecclesiastical Trust—Vestry—City Council—Burial Act, 1857 (20 & 21 Vict. c. 81), s. 24—London Government Act, 1899 (62 & 63 Vict. c. 14), ss. 4, 23.*—The question in this action, arising out of the investigation of a very complicated state of facts, was, shortly, whether the rents of certain houses erected on an unconsecrated portion of land acquired by a vestry for a burial ground, ought to be applied under the directions of the city council, as the successors (under the London Government Act, 1899) of the vestry, for the benefit of the parish, or whether they were held by the vestry upon trusts of an ecclesiastical nature.

HELD—that under sect. 24 of the Burial Act, 1857, which clearly applied to the case, a declaration must be made that the rents arising from the lands and buildings in question after discharging thereout any incumbrances affecting the burial ground, and any debts (including any annual sum charged by statute) properly incurred by the vestry in their fiduciary capacity, ought to be applied in such manner for the benefit of the parish as the plaintiff council, the successors of the vestry, might direct.

WESTMINSTER CORPORATION *v.* RECTOR, ETC.  
[OF ST. GEORGE, HANOVER SQUARE, [1908]]  
2 Ch. 600; 72 J. P. 413; 99 L. T. 520—  
Warrington, J.

**II. CHURCHYARDS.**

[No paragraphs in this vol. of the Digest.]

**III. DISUSED BURIAL GROUNDS.**

[No paragraphs in this vol. of the Digest.]

**IV. EXHUMATION OF REMAINS.**

[No paragraphs in this vol. of the Digest]

**BUTTER.**

See FOOD AND DRUGS.

**BYE-LAWS.**

See COMPANIES; FISHERIES; HIGHWAYS; LOCAL GOVERNMENT; MARKETS AND FAIRS; METROPOLIS; OPEN SPACES; PUBLIC HEALTH; RAILWAYS; TRAMWAYS; WEIGHTS AND MEASURES.

**CABS.**

See METROPOLIS; STREET TRAFFIC.

**CANADA.**

See DEPENDENCIES AND COLONIES.

**CANALS.**

See HIGHWAYS; RAILWAYS AND CANALS.

**CAPE COLONY.**

See DEPENDENCIES AND COLONIES.

**CAPITAL AND INCOME.**

See SETTLEMENTS; TRUSTS; WILLS.

**CAPTURE.**

See CONFLICT OF LAWS; INSURANCE.

**CARDS.**

See GAMING AND WAGERING.

**CARGO.**

See SHIPPING AND NAVIGATION.

**CARRIAGE OF PASSENGERS.**

See NEGLIGENCE; RAILWAYS.



**CARRIERS.**

I. RIGHTS AND LIABILITIES . . . . .	COL. 55
II. RAILWAYS . . . . .	55
(a) Passengers' Luggage . . . . .	55
[No paragraphs in this vol. of the Digest.]	
(b) Carriage of Animals . . . . .	56
(c) Carriage of Goods . . . . .	57
[No paragraphs in this vol. of the Digest.]	
See also NEGLIGENCE; RAILWAYS.	

**I. RIGHTS AND LIABILITIES.**

**1. Ship—Passenger's Luggage—Loss of Gold Watch and Money—Negligence—Warranty of Fitness—Conditions on Ticket—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 502 (ii.).**—The plaintiff was a passenger on the defendants' steamship upon the terms of a ticket which provided that the defendants would not be responsible for loss or injury of or to the person or property, goods, or articles belonging to or carried by a passenger, whether occasioned by thefts or robberies by persons in the defendants' employment or others, or any other acts, defaults, or negligence of the defendants' agents or servants of any kind whatsoever. The plaintiff at night placed his gold watch and chain and some money in the watch-pocket over his berth in his cabin. The watch-pocket was close to a fanlight opening on to a ventilating shaft through which a person on deck could reach the watch-pocket. The watch-pocket was placed there under the directions of the defendants' marine superintendent when the vessel was being built. The watch, chain, and money were stolen one night by a person on deck reaching through the ventilating shaft. In an action to recover their value upon the grounds—(1) of negligence on the part of the defendants in placing the watch pocket where it was, and (2) of breach of warranty in not providing a safe cabin for the carriage of the plaintiff's property:—

**HELD**—that if the defendants were negligent, they were protected by the terms of the ticket; that, with regard to the warranty as to articles which remained in the personal control of the passenger, such as his watch, chain, and money, the liability of a carrier was the same as in the case of a passenger—namely, an obligation to exercise reasonable care; that this obligation did not become more extensive at night by reason of the passenger placing the articles in the receptacle intended for them; but that if the obligation did become more extensive, sect. 502 (ii.) of the Merchant Shipping Act, 1894, protected the defendants, the value of the articles not having been declared and the loss not having occurred through the personal fault of the defendants.

**SMITTON v. THE ORIENT STEAM NAVIGATION Co., Ltd.**, 96 L. T. 848; 23 T. L. R. 359; 12 Com. Cas. 270; 10 Asp. M. C. 459—Channell, J.

**II. RAILWAYS.****(a) Passengers' Luggage.**

[No paragraphs in this vol. of the Digest.]

**(b) Carriage of Animals.**

**2. Dog—Condition Limiting Liability—Reasonableness—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 7.**—A dog was consigned by the plaintiff for carriage by the defendants' railway under a special contract, signed by the plaintiff, which contained a condition that the defendants would not "in any case be responsible beyond the following sums . . . dogs, deer or goats, £2 each, unless a higher value be declared at the time of delivery to the company, and a percentage of 1¼ per cent. (minimum 3d.) paid upon the excess of the value so declared." The value of the dog was £300, and the plaintiff paid 4s. for its carriage, but made no declaration as to its value. The dog was lost owing to the negligence of the defendants. In an action to recover its value, the defendants contended that the plaintiff was only entitled to recover £2, and they gave evidence that the special rate of 1¼ per cent. was the usual charge made by all railway companies.

**HELD**—that the special rate of 1¼ per cent. was sufficiently proved to be "just and reasonable" within sect. 7 of the Railway and Canal Traffic Act, 1854; and that therefore the plaintiff was entitled to recover only £2.

Decision of Walton, J. (23 T. L. R. 236; 12 Com. Cas. 158) reversed.

**WILLIAMS v. MIDLAND RY. CO.**, [1908] 1 K. B. [252; 77 L. J. K. B. 157; 98 L. T. 81; 24 T. L. R. 170; 13 Com. Cas. 119—C. A.

**3. Horse—Special Contract—Exemption from Liability—Proof of Neglect or Default—Horse found Injured.**—The plaintiff's horse was carried by railway from Waterloo to Guildford under a contract which relieved the railway company from liability for loss or damage, "except upon proof that the same was occasioned by neglect or default on the part of the company or their servants." The horse was properly boxed at Waterloo, and upon arrival at Surbiton the train was divided, and the front portion was shunted to allow a horsebox to be taken off. The horsebox in which the plaintiff's horse was was in the rear portion of the train. Before the front portion of the train was backed on to the rear portion the horse was heard groaning, and on the box being opened it was found lying on its back with its feet in the air, the ropes to the headstall being still secured and drawn tight. The horse was got out, when it was found to be injured in two or three places. There was no evidence of any improper slowing down or stopping of the train at Surbiton. The box was then converted into a loose box by taking out the partitions, which left exposed the hooks or hinges on which the partitions hung, and the horse was sent on by a later train to Guildford. The Court came to the conclusion that there was no evidence that any of the injuries were occasioned between Surbiton and Guildford. In an action against the railway company to recover damages for the injury to the horse:—

**HELD**—that there was no evidence of any "neglect or default" on the part of the railway

**Railways—Continued.**

company, and that the plaintiff was not entitled to recover.

RUSSELL *v.* LONDON AND SOUTH-WESTERN  
[Ry. Co., 24 T. L. R. 548—C. A.]

**(c) Carriage of Goods.**

[No paragraphs in this vol. of the Digest.]

**CEMETERY.**

*See* BURIAL AND CREMATION.

**CERTIFICATES.**

*See* COMPANIES; EVIDENCE; HIGHWAYS.

**CERTIORARI.**

*See* CROWN PRACTICE.

**CEYLON.**

*See* DEPENDENCIES AND COLONIES.

**CHAMPERTY.**

*See* ACTION.

**CHANNEL ISLANDS.**

*See* DEPENDENCIES AND COLONIES.

**CHARGING ORDER.**

*See* ADMIRALTY; BANKERS AND BANKING; BANKRUPTCY AND INSOLVENCY; PRACTICE.

**CHARITIES.**

	COL.
I. ADMINISTRATION OF CHARITABLE TRUSTS	
(a) Generally . . . . .	57
(b) Schemes . . . . .	59
II. CHARITABLE GIFTS.	
(a) Generally . . . . .	59
(b) Mortmain Acts . . . . .	61
[No paragraphs in this vol. of the Digest.]	
(c) Uncertainty . . . . .	61
<i>And see</i> ACTION; EDUCATION; EXECUTORS, No. 8a; PERPETUITIES; TRUSTS; WILLS.	

**I. ADMINISTRATION OF CHARITABLE TRUSTS.****(a) Generally.**

1. *Bequest to Bishop—In Connection with Cathedral Church.*—W. left by will a fund to

the Bishop of Wakefield "to be applied by him for such general or special purposes in connection with the cathedral church of Wakefield as he in his absolute and uncontrolled discretion shall think fit."

HELD—that it was not within the Bishop's discretion to apply the fund in paying the stipend of a canon missionary with general diocesan duties and only connected with the cathedral by holding an honorary stall there, but that it was within the Bishop's discretion to apply it in paying the stipend of an honorary canon having a stall assigned in the cathedral with some duties therein but whose main work was outside the parish, or of a canon missionary with duties inside the cathedral but whose services might be employed also in a part of the diocese outside the parish.

IN RE WHITEHEAD, BISHOP OF WAKEFIELD *v.*  
[ATTORNEY-GENERAL, *Times*, October 14th,  
1908—Warrington, J.]

2. *Purpose Exhausted—Distribution of Surplus—Colliery Accident Relief Fund—Cy-près.*  
—In 1862 a fund was raised by subscription for the sufferers from an accident at the Hartley Colliery. The fund was largely in excess of what was required. In 1863 the executive committee recommended that the surplus should be distributed among local committees in coal-mining districts to be applied to the relief of sufferers from colliery accidents. A few subscribers, in answer to advertisements, objected to the recommendations, and the proportion of their subscriptions was returned to them or dealt with according to their wishes. A large sum was distributed in accordance with the recommendations, and the remainder was invested in the names of trustees in trust for the purposes of the original relief fund. In the course of time most of those who were the object of the relief fund ceased to exist. After making provision for all present claims and for all costs and expenses, a large sum now remained undisposed of. The general committee proposed to divide this between two associations instituted for the benefit of miners but not for the purpose of giving relief to sufferers from accidents.

HELD—that the trust was created for a specific charitable object, and in such a case there was no resulting trust for the persons who constituted the charity; that, even if there had remained in the subscribers power to give fresh directions as to the application of the surplus, they had not done so as they had not all expressed their wishes, and the absence of dissent could not be construed as assent; that the surplus must be applied *cy-près*; and that, although the original form of relief was for the sufferers from an accident, the position of miners hurt or killed in mining accidents was so different now from what it had been in 1862 that it was not departing from the doctrine of *cy-près* to direct the surplus to be applied for the relief of miners without specifying that it was to be for the relief of miners from the results of accident.

IN RE HARTLEY COLLIERY ACCIDENT RELIEF  
[FUND, PLUMMER *v.* JORDAN, *Times*, July  
21st, 1908—Warrington, J.]

**Administration of Charitable Trusts—Continued.****(b) Schemes.**

**3. Educational Endowment—Finality of Scheme—Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), ss. 5, 30—Board of Education Act, 1899 (62 & 63 Vict. c. 3), s. 2, sub-s. 2.]**—The Charity Commissioners acting under sect. 2, subsect. 2, of the Board of Education Act, 1899, made an order establishing a scheme which determined that the income arising from certain charity funds should be applied to educational purposes. Upon a petition against the scheme upon the ground that its effect would be to devote those funds, which were not originally given for educational purposes, permanently to those purposes, even if circumstances should arise which would make it impossible in future to apply the income in accordance with the scheme:—

**HELD**—that the scheme could not and did not in any way restrict or alter the objects of the charity or prevent the funds from being at some future time applied under some other scheme to other than educational purposes, if circumstances should arise rendering that course expedient.

**IN RE BETTON'S CHARITY, [1908] 1 Ch. 205; [77 L. J. Ch. 193; 72 J. P. 105; 98 L. T. 35; 25 T. L. R. 143; 6 L. G. R. 638—Eady, J.]**

**II. CHARITABLE GIFTS.****(a) Generally.**

**4. Gift for Particular Purpose—Failure—Devotion to Charitable Purposes—Application Cy-près.]**—A testator, by his will, gave a sum of £25,000 to the Institute of Medical Sciences Fund, University of London, which was in process of formation. The £25,000 was paid over to the trustees of the fund. The scheme for the establishment of the Institute was abandoned, and the subscriptions returned, including the £25,000, to the executors of the testator.

**HELD**—that the legacy of £25,000 was not given for charitable purposes generally but was given to aid a particular scheme contingently upon that scheme being carried out, and that therefore it could not be applied *cy-près*.

**IN RE LONDON UNIVERSITY MEDICAL SCIENCES [INSTITUTE FUND, 99 L. T. 545; 24 T. L. R. 820; 52 Sol. Jo. 682; [1908] W. N. 182—Joyce, J.]**

**5. Gift to City Company—"General Benevolent Objects or Purposes" of the Company—Bequest to give Annual Dinner to Members of Company—Failure of Gift—Gift over.]**—A testator, who was a member of the Painters Stainers' Company of the City of London, by his will gave all his property to trustees upon trust to convert the same and out of the proceeds to pay certain legacies, and he bequeathed the residue to the Painter Stainers' Company upon trust (*inter alia*) to give a livery dinner on each anniversary of his birthday and to apply the remainder of the trust moneys "in or towards the general benevolent objects or purposes of the said Painter Stainers' Company," and if the Painter

Stainers' Company should fail to comply with two specified conditions in his will, the residue was to go to the National Debt Commissioners. The Painter Stainers' Company was a guild for the protection of the particular trade, and held funds for charitable and other purposes.

**HELD**—(1) that the gift for the dinners was not a good charitable gift; (2) that, the gift having failed, the money fell into the residue; (3) that the gift of the residue, being for general benevolent purposes, was not a gift for charitable purposes, and was therefore bad as being a gift in perpetuity; and (4) that, upon the construction of the gift over, so far as the fund was not held on good charitable trusts, there was an intestacy.

**IN RE BARNETT, WARING v. PAINTER [STAINERS' COMPANY, 24 T. L. R. 788—Parker, J.]**

**6. Gift to Holder of Religious Office.]**—The mere fact that a trustee to whom a testator leaves property for purposes specified to be charitable or religious is a person holding a religious office or is the head of a charitable institution is not sufficient to enable the Court to hold all the trusts and purposes to be "charitable."

A testator by his will gave his real and personal estate to his executors upon trust for conversion and sale, and after giving certain legacies he directed them to hold the residue "in trust for the said Roman Catholic Archbishop of Westminster for the time being to be distributed and given by him at his absolute discretion between such charitable, religious, or other societies, institutions, persons, or objects in connection with the Roman Catholic faith in England as he shall in his absolute discretion think fit."

**HELD**—that it was not a good charitable gift, for there was nothing to prevent the gift being applied to non-religious or non-charitable purposes, there being no body of beneficiaries who could invoke the aid of the Court.

**IN RE DAVIDSON, MINTY v. BOURNE, 99 L. T. [222; 24 T. L. R. 760; 52 Sol. Jo. 621—C. A.]**

**7. Gift to Metropolitan Police Courts—Bequest to Poor Box—What are such Courts—Not the West Ham Police Court.]**—The Metropolitan Police Courts Act, 1839, enumerated the several metropolitan police courts, and by sect. 2 gave power to alter the number of such courts. The West Ham Police Court not having been so enumerated or constituted under such power, is not within the meaning of a bequest to the poor box at each metropolitan police court.

**IN RE HILL, DAVIS v. CLUER, 125 L. T. Jo. 149 [—Eve, J.]**

**8. Gift to Societies chosen by Charity Organization Society—Validity.]**—A testator by his will gave the residue of his estate to the treasurers for the time being of the Charity Organization Society upon trust to invest and pay one-tenth of the income to the society, and "to divide and pay the residue of such annual income to such other society or societies as shall,



**Charitable Gifts—Continued.**

in the opinion of the governing body of the Charity Organization Society, be most in need of help besides fulfilling the standard of good management, efficiency, and economy of such Charity Organization Society."

**HELD**—that, as there was nothing to restrict the "other societies" to societies whose objects were "charitable" in the legal sense of the word, the gift of the nine-tenths was not a good charitable gift, and was therefore not valid.

**IN RE FREEMAN, SHILTON v. FREEMAN**,  
[[1908] 1 Ch. 720; 77 L. J. Ch. 401; 98 L. T. 429; 24 T. L. R. 300; 52 Sol. Jo. 262—C. A.

**(b) Mortmain Acts.**

[No paragraphs in this vol. of the Digest.]

**(c) Uncertainty.**

**9. Gift for Charitable or Emigration Uses—Validity—Part cannot be Valid, and Part Invalid.**—A gift by will for such charitable uses or for such emigration uses, or partly for such charitable uses and partly for such emigration uses, as the executors should, in their absolute and uncontrolled discretion, think fit, is void for uncertainty. There being nothing to confine the emigration gift to poor persons, or to such emigration as would benefit the public, that gift was not charitable.

A gift for purposes some of which are, and others are not, charitable cannot be supported.

**IN RE SIDNEY, HINGESTON v. SIDNEY**, [1908]  
[1 Ch. 126; 77 L. J. Ch. 51; 24 T. L. R. 34—  
Eady, J.

**Affirmed**, [1908] 1 Ch. 488; 77 L. J. Ch. 296;  
98 L. T. 625; 24 T. L. R. 296; 52 Sol. Jo. 262—  
C. A.

**10. Gift for Indigent Bachelors and Widowers who have shown Interest in Science.**—A testator by his trust disposition and settlement directed his trustees "to employ the whole residue of my estate, means, and effects in instituting and carrying on a scheme for the relief of indigent bachelors and widowers, of whatever religious denomination or belief they may be, who have shown practical sympathy either as amateurs or professionals in the pursuits of science in any of its branches, whose lives have been characterised by sobriety, morality, and industry, and who are not less than 55 years of age, or of aiding any scheme which now exists or may be instituted by others for that purpose."

**HELD**—that the bequest was a good charitable gift, and was not void for uncertainty.

**Decision of the Ct. of Sess.** ([1907] S. C. 185) affirmed.

**WEIR AND OTHERS v. BROWN AND OTHERS**,  
[1908] A. C. 162; [1908] S. C. (H. L.) 3; 77  
L. J. P. C. 41; 98 L. T. 325; 24 T. L. R. 308;  
52 Sol. Jo. 261—H. L.

**11. Option to retain Investments Indefinitely.**—A testator, after bequeathing a number of legacies to specific charities and public institutions, gave his trustees, in the event of there

being any undisposed-of residue, full power "at any time or times" . . . "as and when the said residue or any part thereof becomes available, as they may deem proper, to pay over or divide the said residue or any part or parts thereof to or amongst such local or Scottish charitable institutions and schemes already constituted, or which may hereafter be constituted (and which may include those hereinbefore named), as they may select, or any one or more of such institutions and schemes, and that at such time, in such manner, or in such proportions, all as they in their absolute discretion may deem proper." He also gave to his trustees the "fullest powers of and in regard to realisation, investment, administration, management, and division as if they were beneficial owners," and empowered them to retain the investments of which the estate might consist at the time of his death, "and that for such time or times as they may think fit or indefinitely."

**HELD**—that the bequest of residue was not void for uncertainty.

**Decision of Ct. of Sess.** ([1907] S. C. 953) affirmed.

**DICK v. AUDSLEY**, [1907] A. C. 347; 77 L. J.  
[P. C. 127; [1908] S. C. (H. L.) 27; 45  
Sc. L. R. 683—H. L. (Sc.).

**CHARTERPARTY.**

*See SHIPPING AND NAVIGATION.*

**CHEQUES.**

*See BANKERS AND BANKING; CONFLICT OF LAWS.*

**CHILDREN.**

*See BASTARDY; CRIMINAL LAW AND PROCEDURE; EDUCATION; FACTORIES AND WORKSHOPS; INFANTS.*

**CHOSSES IN ACTION.**

*See also BANKRUPTCY; CONFLICT OF LAWS; CONTRACTS, ETC.*

**CHURCHES, CHURCH-WARDENS, AND CLERGY.**

*See ECCLESIASTICAL LAW.*



**CHURCHYARD.***See* BURIAL AND CREMATION.**CLEARING HOUSE.***See* BANKERS.**CLERK OF THE PEACE.***See* PUBLIC OFFICERS.**CLUBS.***And see* GAMING AND WAGERING ; INTOXICATING LIQUORS ; INSURANCE, No. 10. For Shop Clubs *see* INDUSTRIAL SOCIETIES.

1. *Expulsion of Member*—*Institute of Chartered Accountants*—*Non-payment of Subscription*—*Exclusion from Membership*—*Notice to Member*—*“Opportunity of being heard”*—*Notice sent by Post.*—By a clause in the charter of the Institute of Chartered Accountants, if any member fails to pay his subscription for six months after the same has become due, he is liable to be excluded from membership by a resolution of the council passed at a meeting specially convened for the purpose, the member having first an opportunity of being heard. The members' annual subscriptions become due in January of each year. The plaintiff forgot to pay his subscription for more than six months after it became due, and notices calling his attention to it were sent to him by post to his address as registered in the books of the institute. The plaintiff had in fact changed his address, but had not given notice of the change to the institute or to the Post Office, and in consequence he did not receive the notices, the letters being returned through the Dead Letter Office. The council having passed a resolution excluding him from membership :—

**HELD**—that the posting of the notices to him to his address as registered in the books of the institute was a proper means of communicating them to him, and that personal service was not necessary ; that therefore the plaintiff had an opportunity of being heard, and the resolution excluding him was duly passed.

**JAMES v. THE INSTITUTE OF CHARTERED ACCOUNTANTS**, 98 L. T. 225 ; 24 T. L. R. 27 —C. A.

**COAL.***See* MINES.**COINS AND COINAGE.***See* CRIMINAL LAW.**COLLECTING SOCIETIES.***See* INDUSTRIAL SOCIETIES.**COLLEGES.***See* CHARITIES ; EDUCATION.**COLLISIONS AT SEA.***See* SHIPPING AND NAVIGATION.**COMBINATIONS AFFECTING TRADE.***See* TRADE AND TRADE UNIONS.**COMMISSION.***See* AGENCY ; COMPANIES.**COMMISSION TO EXAMINE WITNESSES.***See* EVIDENCE ; PRACTICE AND PROCEDURE.**COMMONS.**

[No paragraphs in this vol. of the Digest.]

**COMMONWEALTH OF AUSTRALIA.***See* DEPENDENCIES AND COLONIES.**COMMUTATION OF TITHES.***See* ECCLESIASTICAL LAW.**COMPANIES.**

I. AMALGAMATION . . . . . COL. 67

[No paragraphs in this vol. of the Digest.]

II. ARTICLES OF ASSOCIATION.

(a) General . . . . . 67

[No paragraphs in this vol. of the Digest.]

**Companies—Continued.**

	COL.		COL.
II. ARTICLES OF ASSOCIATION— <i>contd.</i>		XVI. MEETINGS.	
(b) Alteration . . . . .	67	(a) General . . . . .	81
[No paragraphs in this vol. of the Digest.]		[No paragraphs in this vol. of the Digest.]	
III. ASSOCIATIONS NOT FOR PROFIT . . . . .	67	(b) Extraordinary . . . . .	81
[No paragraphs in this vol. of the Digest.]		(c) Special Resolution . . . . .	81
IV. AUDITORS . . . . .	67	[No paragraphs in this vol. of the Digest.]	
[No paragraphs in this vol. of the Digest.]		XVII. MEMORANDUM OF ASSOCIATION.	
V. BORROWING . . . . .	67	(a) General . . . . .	81
[No paragraphs in this vol. of the Digest.]		[No paragraphs in this vol. of the Digest.]	
VI. CAPITAL . . . . .	67	(b) Alteration . . . . .	81
[No paragraphs in this vol. of the Digest.]		XVIII. NOTICES . . . . .	82
VII. COMMISSION ON ACCEPTANCE OF SHARES . . . . .	67	[No paragraphs in this vol. of the Digest.]	
[No paragraphs in this vol. of the Digest.]		XIX. PROMOTERS . . . . .	82
VIII. CONTRACTS.		XX. PROSPECTUS.	
(a) Pre-incorporation Contracts . . . . .	68	(a) General . . . . .	82
(b) Provisional Contracts . . . . .	68	(b) Liability of Directors . . . . .	82
(c) <i>Ultra vires</i> . . . . .	68	(c) Omission to state Material Contract . . . . .	82
[No paragraphs in this vol. of the Digest.]		[No paragraphs in this vol. of the Digest.]	
IX. DEBENTURES.		XXI. PROXIES . . . . .	83
(a) General . . . . .	68	[No paragraphs in this vol. of the Digest.]	
(b) Debenture-holders' Action . . . . .	70	XXII. RECEIVERS . . . . .	83
(c) Floating Security . . . . .	70	[No paragraphs in this vol. of the Digest.]	
(d) Priority . . . . .	71	XXIII. RECONSTRUCTION . . . . .	83
[No paragraphs in this vol. of the Digest.]		XXIV. REDUCTION OF CAPITAL.	
(e) Registration . . . . .	71	(a) General . . . . .	83
(f) Validity . . . . .	73	(b) Loss of Capital . . . . .	84
X. DEEDS OF ARRANGEMENT . . . . .	74	[No paragraphs in this vol. of the Digest.]	
[No paragraphs in this vol. of the Digest.]		(c) Power to Reduce . . . . .	84
XI. DEFUNCT COMPANY . . . . .	74	[No paragraphs in this vol. of the Digest.]	
XII. DIRECTORS.		(d) Return to Shareholders of Capital not required . . . . .	84
(a) General . . . . .	75	[No paragraphs in this vol. of the Digest.]	
(b) Appointment . . . . .	75	XXV. REGISTER OF MEMBERS . . . . .	84
[No paragraphs in this vol. of the Digest.]		XXVI. REGISTERED NAME . . . . .	85
(c) Fiduciary Relation . . . . .	75	[No paragraphs in this vol. of the Digest.]	
[No paragraphs in this vol. of the Digest.]		XXVII. SALE OF UNDERTAKING . . . . .	85
(d) Misfeasance . . . . .	75	XXVIII. SECRETARY . . . . .	85
[No paragraphs in this vol. of the Digest.]		XXIX. SHAREHOLDERS . . . . .	85
(e) Prospectus . . . . .	75	XXX. SHARES.	
(f) Powers . . . . .	75	(a) General . . . . .	86
[No paragraphs in this vol. of the Digest.]		(b) Allotment . . . . .	86
(g) Qualification . . . . .	75	(c) Calls . . . . .	88
[No paragraphs in this vol. of the Digest.]		(d) Certificate . . . . .	88
(h) Quorum . . . . .	75	[No paragraphs in this vol. of the Digest.]	
[No paragraphs in this vol. of the Digest.]		(e) Forfeiture . . . . .	88
(i) Remuneration . . . . .	75	(f) Issued at a Discount . . . . .	89
(k) Vacation of Office . . . . .	77	[No paragraphs in this vol. of the Digest.]	
XIII. DIVIDENDS.		(g) Issued not for Cash . . . . .	89
(a) General . . . . .	78	[No paragraphs in this vol. of the Digest.]	
[No paragraphs in this vol. of the Digest.]		(h) Transfer . . . . .	89
(b) Payment out of Capital . . . . .	78	(i) Underwriting Agreements . . . . .	90
[No paragraphs in this vol. of the Digest.]		[No paragraphs in this vol. of the Digest.]	
(c) Preference Shares . . . . .	78		
XIV. FLOTATION . . . . .	78		
[No paragraphs in this vol. of the Digest.]			
XV. MANAGEMENT . . . . .	78		

## Companies—Continued.

COL.

XXXI. UNREGISTERED COMPANIES . . . . .	90
[No paragraphs in this vol. of the Digest.]	
XXXII. VOTING . . . . .	90
[No paragraphs in this vol. of the Digest.]	
XXXIII. WINDING-UP.	
(a) General . . . . .	90
(b) Assets . . . . .	90
[No paragraphs in this vol. of the Digest.]	
(c) Compulsory Orders . . . . .	90
(d) Contributories . . . . .	90
(e) Creditors . . . . .	91
[No paragraphs in this vol. of the Digest.]	
(f) Examination . . . . .	91
[No paragraphs in this vol. of the Digest.]	
(g) Fraudulent Preference . . . . .	91
[No paragraphs in this vol. of the Digest.]	
(h) Liquidators . . . . .	91
(i) Petition . . . . .	91
[No paragraphs in this vol. of the Digest.]	
(k) Practice . . . . .	91
(l) Proof . . . . .	92
[No paragraphs in this vol. of the Digest.]	
(m) Reconstruction . . . . .	92
(n) Surplus Assets . . . . .	92
XXXIV. VOLUNTARY WINDING-UP.	
(a) General . . . . .	92
(b) Liquidators . . . . .	92
(c) Reconstruction . . . . .	92
(d) Supervision Orders . . . . .	92
[No paragraphs in this vol. of the Digest.]	
(e) Surplus Assets . . . . .	92

See also *BILLS OF EXCHANGE*, Nos. 2, 5 ;  
*BUILDING SOCIETIES ; CONFLICT OF  
 LAWS ; CONTRACTS ; CORPORATIONS ;  
 DEPENDENCIES AND COLONIES ;  
 FRIENDLY SOCIETIES ; LANDLORD  
 AND TENANT ; MORTGAGES*, No. 9 ;  
*PRACTICE AND PROCEDURE ;  
 REVENUE ; WILLS.*

## I. AMALGAMATION.

[No paragraphs in this vol. of the Digest.]

## II. ARTICLES OF ASSOCIATION.

## (a) General.

[No paragraphs in this vol. of the Digest.]

## (b) Alteration.

[No paragraphs in this vol. of the Digest.]

## III. ASSOCIATIONS NOT FOR PROFIT.

[No paragraphs in this vol. of the Digest.]

## IV. AUDITORS.

[No paragraphs in this vol. of the Digest.]

## V. BORROWING.

[No paragraphs in this vol. of the Digest.]

## VI. CAPITAL.

[No paragraphs in this vol. of the Digest.]

## VII. COMMISSION ON ACCEPTANCE OF SHARES.

No paragraphs in this vol. of the Digest.]

## VIII. CONTRACTS.

## (a) Pre-incorporation Contracts.

1. *Preliminary Expenses—Promoter Paying Registration Fees and Stamp Duty—Liability of Company—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 17.*—The mere fact that the promoter of a company pays the fees and stamp duty on its registration does not entitle him to recover them from the company.

*In re English and Colonial Produce Co., Ltd.* ([1906] 2 Ch. 435 ; 75 L. J. Ch. 831 ; 95 L. T. 85—Buckley, J.) overruled on this point.

*IN RE NATIONAL MOTOR MAIL COACH CO., [LD. ; CLINTON'S CLAIM, [1908] 2 Ch. 515 ; 77 L. J. Ch. 790—C. A.*

## (b) Provisional Contracts.

2. *Company not entitled to commence Business—Remuneration to Bankers—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 6, sub-s. 3.*—A company incorporated under the Companies Acts issued a prospectus inviting applications for shares in the company, and the moneys subscribed were paid into the company's bank. The company neither then nor since had obtained a certificate from the Registrar under sect. 6, sub-sect. 2, of the Companies Act, 1900, that they were entitled to commence business, and never were so entitled. The bank claimed to be paid out of the moneys in their hands a certain sum for services rendered.

*HELD*—that as the bank must rely upon some contract with the company, and as by sect. 6, sub-sect. 3, of the Companies Act, 1900, a contract made by a company before the date at which it was entitled to commence business was provisional only and not binding until that date, the bank were not entitled to be paid.

*NEW DRUCE-PORTLAND CO., LD. v. BLAKISTON,* [24 T. L. R. 583—Eady, J.]

## (c) Ultra Vires.

[No paragraphs in this vol. of the Digest.]

## IX. DEBENTURES.

## (a) General.

See *BILLS OF SALE*, No. 1 ; *MORTGAGES*, No. 9.

3. *"Default in Payment"—Interest made Payable at Registered Office of Company—No Demand by Debenture-holder at Office of Company—Action for Receiver.*—By the conditions endorsed on a debenture it was provided that the principal money should become payable "if the company makes default for a period of six months in payment of any interest hereby secured," and it was further provided that "the principal moneys and interest hereby secured will be paid at the registered office of the company." Interest was payable on August 1st and February 1st, and had not been paid since August 1st, 1907, but the debenture-holder had not since then presented himself and demanded payment at the company's office at the dates fixed for payment. On an application by the



**Debentures—Continued.**

debenture-holder for the appointment of a receiver of the assets of the company upon the ground that the principal money secured by the debenture was due :—

**HELD**—that as the debenture-holder had not given the company the opportunity of performing the obligation of payment at its registered office (and the company need not pay at any other place), there had been no default by the company, and, therefore, that the debenture-holder's application failed.

**RE ESCALERA SILVER LEAD MINING COMPANY, LTD., TWEEDY v. THE COMPANY, 25 T. L. R. 87; [1908] W. N. 236—Warrington, J.**

**4. Debenture-holders—Power to Sanction Compromise of Rights against Company—Grounds for so Doing.]**—Power given to a general meeting of debenture-holders under the trust deed to sanction or modify any arrangement or compromise of the rights of the debenture-holders against the company is not a fiduciary power solely exercisable with a view to the interests of the debenture-holders as a class. The power is not a statutory power, but given by contract, and the debenture-holders may vote as they please.

**SMITH AND OTHERS v. KENT COLLIERIES, LD., [AND OTHERS, Times, April 3rd, 1908—Joyce, J.]**

**5. Debenture-holders—Power to Vary Trust Deed—Construction—General Clause following Clauses giving Express Powers.]**—A scheme was put forward for the union of the Mexican Central Railway Co. and the National Railway Co. of Mexico. In order to protect the interests of holders of mortgage bonds of the former, an English company, called the Mexican Central Railway Securities Co., was formed, which took over and vested in trustees the bonds of those holders who were willing to deposit them in exchange for debentures of the Securities Co. Subsequently, at a meeting of these debenture-holders, resolutions were passed altering the trust deed. This motion was by a dissentient debenture-holder to restrain the trustees from giving effect to the resolutions, on the ground that they were *ultra vires*.

Clause 12 (e) in the trust deed conferred powers upon a general meeting of debenture-holders to agree to any variation in the provisions of the trust deed or the security thereby constituted, and to release or modify any of the rights of the debenture-holders thereunder, and to discharge or exonerate the trustees from all liability in respect of breach of trust. Express powers were given in the four preceding clauses.

**HELD**—that the generality of the clause 12 (e) was not cut down by reason of the express powers conferred in the preceding clauses, and that the resolutions were valid.

**SPICER v. HILLINGDEN, Times, May 14th and [20th, 1908—C. A.]**

**6. Uncalled Capital—Receiver Suing in Name of Liquidator to Recover Calls—Nominee of Debenture-holder.]**—The Court approved

the practice of allowing, in proper cases, the receiver, who has been appointed in a debenture-holders' action against a company in liquidation whose uncalled capital is included in the debenture-holders' security, to use the name of the liquidator, upon giving him a proper indemnity, for the purpose of recovering the calls made by him. The Court refused to sanction the application of a debenture-holder, whose security was upon the uncalled capital of a company, that a person nominated by him with the approval of subsequent debenture-holders should be allowed to recover calls made by the liquidator.

**IN RE WESTMINSTER SYNDICATE, LD., [1908] [W. N. 236; 25 T. L. R. 95—Neville, J.]**

**(b) Debenture-holders' Action.**

**7. Security supposed to be Deficient—Dividends—Appropriation to Principal or Interest—Orders Directing Distribution—Subsequent Surplus.]**—A company being in liquidation, it was believed that the assets were not sufficient to pay the principal of the debentures, on which arrears of interest were owing.

Dividends were paid, and in the end the principal was repaid, and there remained a surplus.

**HELD**—that the debenture-holders, and not the company, were entitled to the surplus; the certificate and orders did not amount to a final appropriation of the dividends to capital, and the debenture-holders were entitled to their arrears of interest.

**IN RE CALGARY AND MEDICINE HAT LAND [CO., LD., PIGEON v. THE COMPANY, [1908] 2 Ch. 652—C. A.]**

**(c) Floating Security.**

**8. Power to issue further Debentures and give Specific Charge on certain Property—Priorities—Ordinary Course of Business.]**—A company had issued £3,700,000 of debentures out of an authorised issue of £6,000,000. They were called first mortgage debentures, and by them the company created a floating charge on all its property, but this was not to interfere with the right of the company to deal with its property. By the conditions on the debentures the whole issue was to rank *pari passu* as a first charge on the company's property, and a meeting of debenture-holders might sanction the creation and issue of other debentures ranking as part of or *pari passu* with such authorised issue.

**HELD**—(1) that the company might issue new debentures (the total debt not to exceed the £6,000,000) and secure the same by a specific charge upon specific assets in favour of trustees; or

(2) Might issue further debentures of the issue already authorised, and similarly further secure them by a specific charge on a specific property.

It was not proved that the schemes were not in the ordinary course of business, even assuming that a company which has created a floating charge cannot charge specific assets except in the ordinary course of business; and the



**Debentures—Continued.**

condition in the debentures did not prevent the creation of such a specific charge.

COX MOORE v. PERUVIAN CORPORATION, LD., [1908] 1 Ch. 604; 77 L. J. Ch. 387; 98 L. T. 611; 15 Manson, 191—Warrington, J.

**(d) Priority.**

[No paragraphs in this vol. of the Digest.]

**(e) Registration.**

9. *Agreement to issue every Fourteen Days Unregistered Debentures in Substitution for the Preceding One—Registration of Last Substituted Debenture—Validity—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14.*—A company issued to a lender an unregistered debenture, and agreed to issue to him every fortnight a similar debenture, each of the series to be in substitution for the last preceding one. The lender was to be at liberty to register any such debenture upon the happening of certain events. The events happened, and he registered the tenth debenture of the series.

HELD—that the agreement, though an evasion of the Act, was not illegal; and that the registered debenture which had passed to a purchaser for value without notice was valid.

IN RE RENSHAW & Co., LD., [1908] W. N. 210—[Neville, J.]

10. *Creation of Charge—Date of—Trust Deed and Issue before 1901—Purchase of Company and Re-issue after 1901—Whether Registration necessary—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14—Companies Act, 1907 (7 Edw. 7, c. 50), s. 15.*—In 1898 a company conveyed and assigned all its present and future real and personal property to trustees to secure an issue of debentures. The debentures were sealed and issued soon afterwards, seven of them (for £100 each) being issued to A. In 1902 the company purchased from A. these seven debentures and took a transfer of them to U. as its nominee. U. at once deposited them and a blank transfer with a bank to secure the company's overdraft.

In 1905 the seven debentures were delivered up to the company and cancelled, and the company issued one debenture for £700, but otherwise in the same form, to R. to secure a cash advance. This debenture was never registered under sect. 14 of the Companies Act, 1900, which came into force on January 1st, 1901. In January, 1907, a winding-up order was made against the company. On August 28th, sect. 15 of the Companies Act, 1907 (which retrospectively validates the security of re-issued debentures under certain circumstances), came into operation, and a debenture-holders' action was commenced on the same day. In that action the question arose whether, having regard to the non-registration of the debenture given to R., he had any security under either it or the trust deed:—

HELD—(1) that the winding-up order was not an order pronounced before March 7th, 1907, "as between the parties to the proceedings in which . . . the order was made" within the meaning of sect. 15, sub-sect. 5, of the Companies Act, 1907;

(2) That there had been a "keeping alive" and "re-issue" of the original debentures within the meaning of sect. 15, sub-sect. 1; and

(3) That as the charge claimed by R. was created on the execution of the trust deed before January 1st, 1901, and not when he advanced money to the company, non-registration of the debenture did not affect his security.

IN RE NEW LONDON AND SUBURBAN OMNIBUS [CO., APPEYARD v. THE COMPANY [1908] 1 Ch. 621; 77 L. J. Ch. 358; 98 L. T. 663; 15 Manson, 154—Neville, J.

11. *"Mortgage or Charge created by Company"—Sale of Part of Property—Purchase of other Property—Companies Act, 1906 (63 & 64 Vict. c. 48), s. 14.*—A company before January 1st, 1901, issued debenture stock, and conveyed to trustees under a trust deed for the debenture-holders certain property as security for the debentures. The trustees, in pursuance of a power contained in the deed, sold part of the property, and after January 1st, 1901, they invested the proceeds of the sale in the purchase of other property, which the vendor conveyed to them (the company not being parties to the deed) upon the trusts contained in the trust deed as part of the mortgaged property:—

HELD—that the conveyance did not require to be registered, as it did not create a mortgage or charge within the meaning of sect. 14 of the Companies Act, 1900.

Cornbrook Brewery Co. v. Land Debenture Corporation ([1904] 1 Ch. 103; 73 L. J. Ch. 121; 52 W. R. 242; 89 L. T. 680; 20 T. L. R. 140; 11 Manson, 60—C. A.) distinguished.

BRISTOL UNITED BREWERIES, LD. v. ABBOT [AND OTHERS, [1908] 1 Ch. 279; 77 L. J. Ch. 136; 98 L. T. 22; 24 T. L. R. 91; 15 Manson, 82—Parker, J.]

12. *Registrar's Certificate—Conclusiveness—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14.*—The certificate of the Registrar of Joint Stock Companies given under sect. 14 of the Companies Act, 1900, is conclusive evidence that all the requirements of the section as to the registration of debentures have been complied with. The Court will not go behind such a certificate and inquire, e.g., whether debenture-holders do in fact rank *pari passu*.

Decision of Warrington, J. ([1907] 2 Ch. 471) affirmed.

IN RE YOLLAND, HUSSON & BIRKETT, LD., [LEICESTER v. THE COMPANY, [1908] 1 Ch. 152; 77 L. J. Ch. 43; 97 L. T. 824; 14 Manson, 346—C. A.]

13. *Series of Debentures—"Containing any Charge"—Substituted Property—Certificate of Registration—Conclusiveness—Ship Mortgages under Merchant Shipping Act, 1894—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14.*—A company issued debenture stock, which was secured by a trust deed only, and amongst the assets subject to the deed were certain named steamships, the company having power, with the consent of the trustees of the deed, to withdraw

**Debentures—Continued.**

any of the specifically mortgaged property upon substituting other property of equal or greater value. The company filed for registration, under sect. 14 of the Companies Act, 1900, the particulars required in the case of the issue of a series of debentures, except that, by inadvertence, the date of the resolution creating the series was not filed. The registrar gave his certificate of registration, and the certificate was endorsed on each certificate of the debenture stock. The company subsequently executed mortgages of the steamships under the Merchant Shipping Act, 1894, and registered them under that Act.

**HELD**—that the debenture stock was “a series of debentures”; that it contained a “charge to the benefit of which the holders of that series” were entitled, as it was sufficient that the trust deed contained the charge; that the certificate of registration was conclusive that the requirements of the section had been complied with; that the registration protected the substituted property; and that therefore sect. 14, sub-sect. 4, of the Companies Act, 1900, had been complied with, and it was not necessary to register the ship mortgages under that Act.

*In re Harrogate Estates, Ltd.* ([1903] 1 Ch. 498; 72 L. J. Ch. 313; 88 L. T. 82; 51 W. R. 334; 19 T. L. R. 246; 10 Manson, 113—Buckley, J.), and *In re Yolland, Husson and Birket* (*supra*) applied.

*Cornbrook Brewery Co. v. Law Debenture Corporation* ([1904] 1 Ch. 103; 73 L. J. Ch. 121; 89 L. T. 680; 52 W. R. 242; 20 T. L. R. 140; 11 Manson, 60—C. A.) distinguished.

**CUNARD STEAMSHIP Co. v. HOPWOOD**, [1908] 2 Ch. 564; 77 L. J. Ch. 785; 99 L. T. 549; 24 T. L. R. 865—Eady, J.

**14. Registration — Whether Necessary — Decision how Obtained.**—The Court will not decide whether registration of a mortgage is or is not necessary upon an originating summons.

**IN RE CUNARD STEAMSHIP Co. LD.**, [1908] [W. N. 160; 99 L. T. 549—Eady, J.

**(f) Validity.**

*And see No. 10, supra.*

**15. Re-issue — Debentures Issued for Loan — Paying Off Loan—Keeping Debentures Alive—Power of Company.**—A company issued a series of debentures for £500,000 to rank *pari passu*. £100,000 of the debentures were issued to a firm of bankers as security for advances which were not to exceed £150,000. This latter sum was advanced to the company. The indebtedness of the company to the bankers was subsequently reduced to £85,560, and by an agreement between the company and the bankers the latter then advanced to the company a further sum of £500 upon the security of the debentures, and the £85,560 was then paid off. The intention was to avoid the debentures being freed from all charges in favour of the bankers. Warrington, J., upon the application of the other holders of the debentures of the same series, granted an injunction to restrain the company from issuing the

debentures or charging them for any sum in excess of the £500.

**HELD**, on appeal—that the debentures were dead when the £150,000 was paid off, and could not be re-issued for a further sum.

*In re Tasker & Sons* ([1905] 2 Ch. 587; 74 L. J. Ch. 643; 54 W. R. 65; 93 L. T. 195; 21 T. L. R. 736; 12 Manson, 302—C. A.) followed.

*Semble*—the company had no power to charge the debentures with the £500.

**THE LONDON GENERAL INVESTMENT TRUST, [LD. v. THE RUSSIAN PETROLEUM AND LIQUID FUEL Co., LD.]**, [1907] 2 Ch. 540; 77 L. J. Ch. 21; 97 L. T. 564; 23 T. L. R. 746; 14 Manson, 318—C. A.

**16. Re-issued Debentures—Priority—Redemption.**—Sect. 15 of the Companies Act, 1907, enables a company (save as therein excepted) to keep its debentures alive, for the purpose of re-issue from time to time, as security for advances from the company's bankers, without disturbing their priority, and displaces the law as laid down upon that subject in decisions prior to the passing of the Act.

The section is retrospective, and operates upon past as well as future transactions, and it preserves the priority of such debentures as of the original date of issue, and not merely as of the date of re-issue.

A company, before 1907, deposited from time to time some of its first debentures with its bankers, as security for an overdraft. The practice was to transfer the debentures from nominees of the company to trustees for the bank, and, upon repayment of the overdraft, to re-transfer the debentures to nominees of the company.

**HELD**—that sect. 15 had the effect of preserving the original priority of these debentures.

A company in 1901 invited subscriptions for an issue of second debentures by a prospectus which contained a statement that the issue was made for the purpose, *inter alia*, of repaying a temporary loan from the company's bankers. It was expressly stated in the prospectus, in the conditions on the second debentures and in the trust deed, that the second debentures were to be subject to the whole of the first debenture issue. The loan from the bank was repaid out of the proceeds of the second debenture issue; and some first debentures, which had been deposited with the bank as security for the loan, were afterwards retransferred from trustees for the bank to nominees for the company.

**HELD**—that these first debentures were not redeemed “in pursuance of any obligation so to do” within the meaning of one of the exceptions in sect. 15, and that the priority of these first debentures, as such, was not disturbed.

**FITZGERALD v. PERSSE, LD.** [1908] 1 I. R. 279 [—Barton, J.

**X. DEEDS OF ARRANGEMENT.**

[No paragraphs in this vol. of the Digest.]

**XI. DEFUNCT COMPANY.**

*See CORPORATIONS, No. 1.*



## XII. DIRECTORS.

## (a) General.

*And see* BILLS OF EXCHANGE, NOS. 2, 5 ;  
MANAGEMENT (XV.), *infra* ; and  
SHARES (XXX.), *infra*.

17. *One Company Sole Director of Another Company*—*Ultra vires*.]—It is not *ultra vires* for a company to have no directors or to have another company as its sole directors or managers.

IN RE BULAWAYO MARKET AND OFFICES CO.,  
[LD., [1907] 2 Ch. 458 ; 76 L. J. Ch. 673 ; 97  
L. T. 752 ; 23 T. L. R. 714 ; 14 Manson, 313—  
Warrington, J.]

## (b) Appointment.

[No paragraphs in this vol. of the Digest.]

## (c) Fiduciary Relation.

[No paragraphs in this vol. of the Digest.]

## (d) Misfeasance.

[No paragraphs in this vol. of the Digest.]

## (e) Prospectus.

(See XX. and XXX., *infra*).

## (f) Powers.

[No paragraphs in this vol. of the Digest.]

## (g) Qualification.

[No paragraphs in this vol. of the Digest.]

## (h) Quorum.

[No paragraphs in this vol. of the Digest.]

## (i) Remuneration.

18. *Agreement to Forgo*—"Substantial" *Completion of a Year's Service*.]—Article 100 of a company's articles of association was, as far as material, as follows: "If a majority of the directors shall by resolution agree to forgo or postpone the receipt of their remuneration or any part thereof such resolution shall bind all the directors."

HELD—that where there was an informal agreement among the directors to forgo their remuneration which was not entered on the minutes as a formal resolution of the board and the remuneration subsequently went into the balance-sheet as a liability to the directors, there had been no resolution within article 100 of the articles of association.

HELD FURTHER, that where a director's resignation took effect on December 22nd and there was business to be done on December 24th, the director had not "substantially" completed his service for the year, whether the year ended on December 27th or on December 31st, and was not entitled to remuneration for that year.

KEMPF v. OFFIN RIVER GOLD ESTATES, LD.,  
[Times, April 10th, 1908—Channell, J.]

19. *Date from which Remuneration begins*—*First General Meeting*—*Companies Act, 1862* (25 & 26 Vict. c. 89), *Sched. I, Table A, arts. 54, 58*.]—The subscribers to the memorandum of association of a company which was registered under the Companies Acts, and whose articles of association were those contained in Table A. of Sched. I. to the Companies Act, 1862, appointed the first directors of the company in accordance

with art. 52 of Table A. At the next the first) general meeting of the company the same directors were elected directors, and a resolution was passed fixing their remuneration at £400 per annum, divisible as they might determine. In the balance-sheet submitted to and passed at the second general meeting of the company the remuneration of the directors appeared as commencing at a date previous to the first general meeting of the company. The company having gone into liquidation :—

HELD—that the directors' remuneration commenced at the date of the first general meeting when the resolution was passed fixing the remuneration, and that the directors were liable to refund the remuneration received for the period before that date.

IN RE LONDON GIGANTIC WHEEL CO., LD., 24  
[T. L. R. 618—C. A.]

20. *Director holding Qualifying Shares as Trustee*—*Claim by cestui que trust for the Remuneration*.]—A director of a company receiving the remuneration authorised by its articles receives it as payment for work done and not as profit derived from his qualifying shares, and he is not liable to account for it to the beneficial owner of his qualifying shares.

C., a director of the D. company, was put upon the board of the K. corporation to protect the interests of the D. company. His qualifying shares were provided out of a block already held by the D. company's chairman in trust for the company, and C. executed a declaration of trust in favour of the company. C., on ceasing to be a director of the K. corporation, transferred the shares to the D. company ; and subsequently that company was ordered to be wound up.

HELD—that its liquidator had no claim against C. in respect of the remuneration received by him for acting as a director of the K. corporation.

*Ex parte Beckwith* ([1898] 1 Ch. 324 ; 67 L. J. Ch. 164 ; 78 L. T. 155 ; 46 W. R. 376 ; 5 Manson, 168—Wright, J.) followed.

Decision of Warrington, J. ([1907] 2 Ch. 76 ; 76 L. J. Ch. 434 ; 96 L. T. 837 ; 14 Manson, 156) affirmed.

IN RE DOVER COALFIELD EXTENSION, LD.,  
[1908] 1 Ch. 65 ; 77 L. J. Ch. 94 ; 98 L. T. 31 ;  
24 T. L. R. 5 ; 15 Manson, 51—C. A.]

21. *Remuneration*—*Power of Directors to Grant*—*Action by Shareholder to Restrain*.]—Apart from any prohibition in the memorandum of association, a company may make a bargain with one of its directors to remunerate him for services rendered in the past or to be rendered in the future, either by way of annuity or otherwise.

The memorandum of association of a company declared one of its objects to be to provide for the welfare of "persons in the employment of the company or formerly in their employment, and the widows and children of such persons and others dependent on them, by granting money or pensions" ; and by the articles of association the business of the company was to be managed by the directors, who might exercise all such

**Directors—Continued.**

powers of the company as were not by the statutes or by the articles required to be exercised by the company in general meeting; and the directors' remuneration was to be 3,000*l.*, but the company might by resolution in general meeting grant to the directors additional remuneration.

**HELD**—that a director was not a "person in the employment of the company" within the meaning of the clause in the memorandum of association, and that the directors had no power to grant a director additional remuneration, either in the form of an annuity or otherwise.

**HELD FURTHER**—that, as it was within the powers of the company to do so, an action would not lie by a shareholder on behalf of himself and all other shareholders in respect of an act of the directors which, though without authority, could be adopted or confirmed by the company.

**NORMANDY v. IND, COOPE & Co., LD.**, [1908] 1 Ch. 84; 77 L. J. Ch. 82; 97 L. T. 872; 24 T. L. R. 57; 15 Manson, 65—Kekewich, J.

**22. Remuneration and Expenses—Expenses of Travelling to and from Board Meetings.**—A company's articles of association, after providing for the remuneration of the directors, further provided that the directors "shall be indemnified out of the funds of the company against all costs, charges, losses, damages and expenses which they shall respectively incur and be put to in the execution of their respective offices."

**HELD**—that the out-of-pocket expenses incurred by a director in travelling from his home in Scotland to attend meetings of the board in London were not incurred by him in "the execution of his office" and could not legally be repaid to him.

**MARMOR, LD. v. ALEXANDER**, [1908] S. C. 78—[Ct. of Sess.]

**(k) Vacation of Office.**

**23. Managing Director—Agreement to appoint for Four Years—Director not Re-elected.**—By article 80 of the articles of association of a company the directors were empowered to appoint a director at any time, but any director so appointed was to hold office only until the next ordinary general meeting of the company, and he should then be eligible for re-election. By article 86b, the directors had power to appoint "any one of their number" to be a managing director for such period as they deemed fit, and to revoke such appointment. The plaintiff was appointed a director of the company, and by an agreement of the same date, made between him and the company, he was appointed managing director for four years, one of the terms of agreement being that if he became incapacitated from attending to his duties as managing director the company might by notice forthwith determine the appointment. The plaintiff failed to secure re-election as a director at the next ordinary general meeting, and the company gave him notice to determine the appointment. The plaintiff brought an action against the company for damages for breach of the agreement.

**HELD**—that as the plaintiff had not been re-elected a director of the company, he could not be a managing director, and therefore the agreement came to an end; and that the directors had no power to appoint the plaintiff a managing director to hold office for four years whether the company re-elected him a director or not.

Decision of Sutton, J., 24 T. L. R. 355, reversed.

**BLUETT v. STUTCHBURY'S, LD.**, 24 T. L. R. 469 [—C. A.]

**XIII. DIVIDENDS.****(a) General.**

[No paragraphs in this vol. of the Digest.]

**(b) Payment out of Capital.**

[No paragraphs in this vol. of the Digest.]

**(c) Preference Shares.**

**24. Company—Dividends—Preference Dividend—Whether cumulative or not.**

**HELD**, upon the construction of a company's articles of association, that the profits were to be divided each year between the ordinary and preference shareholders, and that the preference dividends were not cumulative.

**ADAIR v. OLD BUSHMILLS DISTILLERY CO.**, [1908] W. N. 24—Parker, J.

**XIV. FLOTATION.**

[No paragraphs in this vol. of the Digest.]

**XV. MANAGEMENT.**

**25. Extension of Objects—Amendment of Company's By-laws—Duty of Directors—Rights of Dissentient Shareholders—Australian Mutual Provident Society's Act, 1857.**—The Court will not, at the instance of a minority of the shareholders of a company, interfere with its internal management, such as the alteration of its by-laws for the purpose of extending the business of the company, unless the acts complained of are of a fraudulent nature or are beyond the powers of the company.

The directors of a company do not go beyond their functions in recommending to shareholders the extension of the company's business into new fields; and there is no obligation upon the directors, when circulating among the shareholders their own recommendations, to state the arguments of the dissentient shareholders.

A statutory power to carry on business "in or out of" the colony of New South Wales held to authorise an extension of the business to the United Kingdom and British South Africa.

Decision of the Supreme Court of New South Wales (7 S.R., N.S.W., 99) affirmed.

**CAMPBELL v. THE AUSTRALIAN MUTUAL PROVIDENT SOCIETY AND OTHERS**, 77 L. J. P. C. 117; 99 L. T. 3; 24 T. L. R. 623—P. C.

**26. Payment to Secretary—Compromise of Action.**—Ultra vires.—The memorandum of association of a company, which was incorporated under the Companies Acts, but not for the



**Management—Continued.**

purposes of gain, provided that "the income and property of the club, whencesoever derived, shall be applied solely towards the promotion of the objects of the club, as set forth in this memorandum of association, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever by way of profit, to the members of the club; provided that nothing herein contained shall prevent the payment in good faith of remuneration to any officer or servant of the club, or to any member of the club or other person, in return for any services actually rendered to the club." The secretary of the club received a salary of £500 a year, and his employment was determinable on three months' notice. He tendered his resignation as secretary, which was accepted by the council of the club, who passed a resolution that he should be paid £125 (three months' salary), less £60 alleged to be due from him to the club. This resolution was rescinded at a meeting of the club. The secretary having brought an action against the club to recover £125, the new council of the club, upon the recommendation of the finance committee, with the view of putting an end to the action, passed a resolution to pay him £125, less the £60. Upon an application for an injunction to restrain the council from making the payment:—

**HELD**—that as the payment was proposed to be made with the view of settling the action in the interests of the club it was not *ultra vires*.

**YATES v. THE CYCLISTS' TOURING CLUB**, 24 [T. L. R. 581—Neville, J.

**27. Powers of Board—Action in Name of Company—Majority of Votes—Motion by certain Directors to strike out Name of Company as Plaintiffs—Companies Act, 1862 (25 & 26 Vict. c. 89), Table A, art. 55.**—A company which was governed by the regulations in Table A of the Companies Act, 1862, including art. 55 thereof, was formed with the object of acquiring and working a patent belonging to M. That patent was subsequently sold by M. to and was vested in the plaintiff company, M. receiving therefor a cash payment and certain fully-paid shares. M. and three others were the directors of the company, the four holding among them substantially the whole of the subscribed capital. M.'s holding gave him the majority of votes at a general meeting of the company. The directors other than M. having become interested in a patent vested in the defendant company which was alleged to be an infringement of the plaintiff company's patent, and was admittedly a competing patent with that, and those three directors refusing to sanction proceedings on behalf of the plaintiff company against the defendant company, M. commenced an action in the name of the plaintiff company against the defendant company to restrain them from infringing the plaintiff company's patent. No meeting had been held to ascertain the wishes of the company, but it was admitted that no object would be gained by calling such a meeting, seeing that M. could command the majority of votes. The three opposing directors having applied on behalf of

the plaintiff company that the name of the company might be struck out as plaintiffs on the ground that the name had been inserted without the company's authority:—

**HELD**—that the application must be dismissed as the majority of the shareholders had the right to control the action of the directors in the matter.

**MARSHALL'S VALVE GEAR CO., LD. v. [MANNING, WARDLE & CO., LD., 25 T. L. R. 69; [1908] W. N. 234—Neville, J.**

**28. Powers of Company—Resolution—Dissentient Director.**—The articles of association of a company provided: "75. The business of the company shall be managed by the board . . . The board may exercise all the powers of the company, subject, nevertheless, to the provisions of any Acts of Parliament or of these articles, and to such regulations (being not inconsistent with any such provisions of these articles) as may be prescribed by the company in general meeting. . . ." "80. No resolution of a meeting of the directors having for its object" certain specific objects "shall be valid or binding unless not less than 24 hours' notice in writing . . . of the meeting . . . shall have been given to each of the managing directors . . . and neither of them shall have dissented therefrom in writing before or at the meeting at which such resolution is put to the vote." At a meeting of the board of directors a resolution on a subject coming within article 80 was passed by two of the directors against one of the managing directors, who thereupon entered a formal objection in writing. The resolution was submitted to an extraordinary general meeting of the company and carried on a poll. The managing director who had objected to the resolution thereupon brought this action to restrain the company and the other two directors from acting upon it.

**HELD**—that the resolution was invalid, being inconsistent with the articles.

Decision of Warrington, J. (25 T. L. R. 64) reversed.

**SALMON v. QUIN AND AXTENS, LD. AND [OTHERS, 25 T. L. R. 164; 53 Sol. Jo. 150; [1908] W. N. 254—C. A.**

**29. Resolution of Board to Transact Business by Committee of Directors—Exclusion of One Director—Ultra vires—Ultior Object.**—The directors of a company had under the articles of association power to delegate any of their powers to committees consisting of such member or members of their body as they thought fit. B. was one of five directors. The other directors were dissatisfied with the manner in which B. discharged his functions as director. A resolution was passed at a meeting of directors to the effect that a committee should be appointed to transact all ordinary business of the company, and should consist of all the directors except B.

**HELD**—that the resolution was invalid, not having been passed in *bona fide* exercise of the powers given to the directors by the articles of association.

**BRAY v. SMITH, 124 L. T. Jo. 293—Parker, J.**

**Management—Continued.**

**29a. Special Agreement with Manager of Department—Restrictions on Company's Right of Control—Ultra vires.**—By an agreement made between the defendant company and the plaintiff, the latter was appointed sole manager for a term of the company's confectionery department and of extensions of it. He was to have full power to conduct in a reasonable manner the practical and commercial business of the department without in any way being interfered with by the directors, except as regarded the expenditure of additional capital on new branches, the erection of additional buildings or machinery, or the conduct of legal matters. The plaintiff now sought to restrain the company from alleged wrongful and unwarrantable interference with the conduct of the business of his department.

**HELD**—that the agreement was *ultra vires* of the articles of association of the company and of the directors, and could not be enforced.

**HORN v. HENRY FAULDER & Co., LD., 99 L. T. [524—Neville, J.]**

**XVI. MEETINGS.****(a) General.**

[No paragraphs in this vol. of the Digest.]

**(b) Extraordinary.**

**30. Extraordinary General Meeting—Notice—Sufficiency of—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 51.**—A notice of an extraordinary general meeting of a company stated that the meeting would be held for the purpose of considering and approving new regulations which would be submitted to the meeting and of passing a resolution approving and adopting the new regulations; and that copies of the regulations would be forwarded to any shareholder applying for them. The new regulations contained articles increasing the remuneration of the directors, confirming an agreement by the directors to pay the managing director a pension of £1,000 a year, giving each director an indemnity for loss happening in the execution of his office, and giving the directors power to borrow £150,000.

**HELD**—that the notice was not sufficient, and that therefore the meetings were not duly convened, and the resolutions passed thereat were not valid.

**NORMANDY v. IND, COOPE & Co., LD., [1908] 1 Ch. 84; 77 L. J. Ch. 82; 97 L. T. 872; 24 T. L. R. 57; 15 Manson, 65—Kekewich, J.]**

**(c) Special Resolution.**

[No paragraphs in this vol. of the Digest.]

**XVII. MEMORANDUM OF ASSOCIATION.****(a) General.**

[No paragraphs in this vol. of the Digest.]

**(b) Alteration.**

**31. Extension of Area—Imposing Condition to Change Name—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1.**—By its memorandum of association the objects

of a company were defined as being the investment of moneys of the company in advances on real estate in Australasia and the transaction of a general agency and commission business between Australasia and England and elsewhere, including the investment of moneys entrusted to the company. By a special resolution the company resolved to alter the objects of the company so as to allow it to advance money on real property in Australasia and Argentina or on the security of any leasehold interest therein.

The Court confirmed the resolution, and having regard to the peculiar nature of the company's business—lending money on mortgage—did not require a change in the name of the company. A change of name would have caused difficulties and expense in the case of registered titles to land.

**IN RE TRUST AND AGENCY COMPANY OF [AUSTRALASIA, LD., 25 T. L. R. 61; 53 Sol. Jo. 48; [1908] W. N. 229—Eve, J.]**

**32. Limiting Area of Company's Operations—Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), s. 1, sub-s. 5 (e).**—The Court, in considering whether it will confirm an alteration in the memorandum of association of a company under s. 1 of the Companies (Memorandum of Association) Act, 1890, is not, in exercising its discretion, entitled to consider whether the proposed alteration is wise, but only whether the alteration is fair and equitable as between the various shareholders.

**Poole v. National Bank of China, LD. ([1907] A. C. 229; 76 L. J. Ch. 458; 96 L. T. 889; 23 T. L. R. 567; 14 Manson, 218—H. L.)** applied.

It has, therefore, powers to confirm alterations of a most fundamental character, restricting a world-wide enterprise to a small area.

In the particular case the Court refused to confirm an alteration in the memorandum of association of a company restricting the operations of the company to Palestine, Syria, or other parts of Turkey in Asia, the peninsula of Sinai, and the island of Cyprus, on the grounds (1) that three-fourths of the shareholders had expressed no opinion on the point; and (2) that the council who controlled and were likely to control the company's operations were in fact conducting its operations on the line of the proposed alteration.

**IN RE THE JEWISH COLONIAL TRUST, LD., [1908] 2 Ch. 287; 77 L. J. Ch. 629; 99 L. T. 243; 24 T. L. R. 595; 15 Manson, 279—Eve, J.]**

**XVIII. NOTICES.**

[No paragraphs in this vol. of the Digest.]

**XIX. PROMOTERS.**

See No. 1, *supra*.

**XX. PROSPECTUS.****(a) General.**

See SHARES (XXX.), *infra*.

**(b) Liability of Directors.**

See No. 42, *infra*.

**(c) Omission to state Material Contract.**

[No paragraphs in this vol. of the Digest.]



**XXI. PROXIES.**

[No paragraphs in this vol. of the Digest.]

**XXII. RECEIVERS.**

[No paragraphs in this vol. of the Digest.]

**XXIII. RECONSTRUCTION.**

**33. Ultra vires—Sale for Partly-paid Shares—Distribution among Shareholders—Sale of Dissident Shareholders' Shares—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161.]**—A scheme which imposes upon a member of a company the alternative of accepting liability for a larger sum than the liability on his shares or of being dispossessed of his status as a shareholder upon terms which he is not bound to accept is contrary to the Companies Act, 1862, and *ultra vires*.

When a company is proposed to be or is in course of being wound up, s. 161 of the Act contains provisions which define the rights of members and which cannot by any clauses in the memorandum and articles of association be excluded.

A company, by its memorandum of association, had power to sell or otherwise dispose of any of its property to any other company, person, or firm, and either for cash, shares, debenture stock, or mortgage, or any other security of any company, whether registered in South Africa, England, or elsewhere, and whether such shares were fully paid or not. The company agreed to sell its undertaking and assets to a new company in consideration of a certain number of partly-paid shares in the new company and the payment by the new company of the liabilities of the old company and costs of the liquidation; and the liquidator was to offer the shares in the new company *pro rata* to the shareholders in the old company, and in the event of any of the members of the old company not accepting their proportion of shares, the liquidator was to sell the shares not accepted, and to distribute the net proceeds of the sale rateably among the non-accepting members. The scheme was approved at a meeting of the company.

**HELD**—that the scheme was *ultra vires*.

*Cotton v. Imperial and Foreign Agency and Investment Corporation* ([1892] 3 Ch. 454; 61 L. J. Ch. 684; 67 L. T. 342; 8 T. L. R. 777—Chitty, J.) and *Fuller v. White Feather Reward, Ltd.* ([1906] 1 Ch. 823; 75 L. J. Ch. 393; 95 L. T. 404; 22 T. L. R. 400; 13 Manson, 136—Warrington, J.) overruled. *Bisgood v. Nile Valley Co.* ([1906] 1 Ch. 747; 75 L. J. Ch. 379; 94 L. T. 304; 54 W. R. 397; 22 T. L. R. 317; 13 Manson, 126—Kekewich, J.) approved.

Decision of Eve, J. (24 T. L. R. 413) reversed.

**BISGOOD v. HENDERSON'S TRANSVAAL ESTATES, [LD. AND OTHERS, [1908] 1 Ch. 743; 77 L. J. Ch. 486; 98 L. T. 809; 24 T. L. R. 510; 52 Sol. Jo. 412; 15 Manson, 163—C. A.**

**XXIV. REDUCTION OF CAPITAL.****(a) General.**

**34. Paid-up Capital under £10,000—Confirmation by High Court—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 12—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), ss.**

1, 3.]—The High Court has concurrent jurisdiction with the county court to confirm a reduction of the capital of a company whose paid-up capital is under £10,000, and whose office is within the district of a county court having jurisdiction to wind it up. But the High Court will not necessarily exercise its jurisdiction in such a case.

**IN RE PORTSMOUTH AND DISTRICT VACUUM [CLEANER Co., [1908] W. N. 203—Neville, J.**

**35. Reduction of Capital—Conversion without Reduction—Companies Acts, 1867 (30 & 31 Vict. c. 131), s. 9, and 1877 (40 & 41 Vict. c. 26), ss. 3, 4.]**—A limited company under its memorandum had a capital of £50,000 divided into 50,000 shares of £1 each, with power to reduce its capital. All its shares had been issued, 12s. 6d. being paid up on each share. The shareholders unanimously passed and confirmed a special resolution that the capital of the company should be converted from 50,000 shares of £1 each with 12s. 6d. paid up into 50,000 shares of £1 each, with the full amount paid up on 31,250, leaving 18,750 to be issued at the discretion of the directors; and that such conversion should be effected by re-allocating the share capital among the shareholders, crediting to each of them one £1 share for each pound sterling at his credit in the share capital account.

The Court refused to confirm the resolution on the ground that it effected a "conversion" and "re-allocation," and not a reduction of capital.

**IN RE WALKER STEAM TRAWL FISHING CO., [1908] S. C. 123—Ct. of Sess.**

**(b) Loss of Capital.**

[No paragraphs in this vol. of the Digest.]

**(c) Power to Reduce.**

[No paragraphs in this vol. of the Digest.]

**(d) Return to Shareholders of Capital not required.**

[No paragraphs in this vol. of the Digest.]

**XXV. REGISTER OF MEMBERS.**

**36. Address Book of Shareholders—Right to Copy—Inquiry into Applicant's Motives—Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), s. 10.]**—Where a shareholder in a company regulated by the Companies Clauses Consolidation Act, 1845, applies under sect. 10 thereof for a copy of the address book of shareholders, any inquiry into his motives is immaterial.

**DAVIS v. GAS LIGHT AND COKE CO., 25 T. L. R. [135; [1908] W. N. 255—Warrington, J.**

**37. Entry of Shareholder's Name—Executor—Right of Company to enter as such—Order of entry of Names—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 25, 30.]**—The articles of association of a company provided that the company should not be bound by nor recognise any equitable, contingent, future, or partial interest in any share, nor any right or trust other than an absolute right thereto in the persons registered as the holders thereof; that the executors or



**Register of Members—Continued.**

administrators of a deceased member, not being one of several joint owners, should be the only person recognised by the company as having any title to his shares; and that any person becoming entitled to a share in consequence of the death of any member might be registered as a member. Upon the death of a shareholder his executors applied to be registered as members, but the company refused to register them except with the addition of words showing that they were executors.

**HELD**—that the executors had a right to be registered without any qualification, and that they also had a right to choose in what order the names should be registered.

**IN RE T. H. SAUNDERS & Co., LD.,** [1908] 1 Ch. 415; 77 L. J. Ch. 289; 98 L. T. 533; 24 T. L. R. 263; 52 Sol. Jo. 225; 15 Manson, 142—Warrington, J.

**XXVI. REGISTERED NAME.**

[No paragraphs in this vol. of the Digest.]

**XXVII. SALE OF UNDERTAKING.**

See also RECONSTRUCTION (XXIII.), *supra*.

**38. Sale of Undertaking to another Company**—*Winding up—Purchase of Dissident Member's Interest—Right of such Member to examine Officers prior to the Arbitration as to value—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 115, 161, 162.*—A company being in voluntary liquidation and its undertaking being about to be sold to another company under sect. 161 of the Companies Act, 1862, the liquidator elected to purchase a dissentient shareholder's interest under sect. 115 at a price to be fixed by arbitration.

The Court refused to allow the shareholder to examine the officers of the company under sect. 115 in order that he might obtain evidence for use on the arbitration.

*Morgan's Case* ((1884) 28 Ch. D. 620; 54 L. J. Ch. 765; 51 L. T. 623; 33 W. R. 209—Bacon, V.-C.) applied.

**IN RE BRITISH BUILDING STONE CO., LD.,** [1908] 2 Ch. 450; 77 L. J. Ch. 752; 99 L. T. 608—Eady, J.

**XXVIII. SECRETARY.**

See No. 26, *supra*.

**XXIX. SHAREHOLDERS.**

**39. Rights of Preference and Ordinary Shareholders—Inconsistency between Memorandum and Articles of Association—Provision in the Articles for Preferential Treatment of One Class of Shareholders.**—By the memorandum of association of a limited company "The capital of the company is £250,000 divided into 139,092 ordinary shares of £1 each, and 110,908 deferred shares of £1 each." By the articles of association the ordinary shares should have a preferential ranking as to dividend; and in the event of a winding-up, the shares of the company should be repaid "in the order in which the shares or stocks are entitled to rank for pay-

ment of dividend." In the winding up of the company the deferred shareholders maintained that the provision in the articles for the preferential ranking of the ordinary shareholders in a winding-up was inconsistent with the memorandum of association, and was therefore invalid; and that the surplus assets fell to be distributed equally among all the shareholders.

**HELD**—that there was no inconsistency between the articles and the memorandum, and that in the winding up the ordinary shareholders were entitled to payment of their capital in full before the deferred shareholders received anything on account of their capital.

*Andrews v. Gas Meter Co.* ([1897] 1 Ch. 361; 66 L. J. Ch. 246; 45 W. R. 321—C. A.) approved.

*LIME v. COATS*, [1908] S. C. 751—Ct. of Sess.

**XXX. SHARES.****(a) General.**

**40. Contract to take Shares—Action for Rescission—Calls Unpaid—Notice to Forfeit Shares—Injunction—Practice.**—Where a shareholder is suing for rescission of his contract to take shares, and the company, being about to go into liquidation, give notice of intention to forfeit the shares for non-payment of calls in arrears, the Court will restrain the company from so doing until trial of the action upon the shareholder giving the usual undertaking as to damages, and paying into Court the amount of the calls with interest.

*Ripley v. Paper Bottle Co.* ((1887) 57 L. J. Ch. 327—Chitty, J.) distinguished.

*LAMB v. SAMBAS RUBBER AND GUTTA* [PERCHA Co., LD., [1908] 1 Ch. 845; 77 L. J. Ch. 386; 98 L. T. 633; 15 Manson, 189—Neville, J.

**41. Contract to take Shares on Conditions—Conditions ultra vires the Board—Setting off Calls against Fees—No Membership.**—A. applied for shares in a company and paid the application money, but on the express condition that his firm should be appointed to a certain office, and that he should be at liberty to pay up the balance due on his shares by the fees to be earned by his firm.

**HELD**—that it was *ultra vires* of the directors to make such an agreement as to payment of calls, and that A. was not a shareholder in the company.

*NATIONAL HOUSE PROPERTY INVESTMENT CO.,* [LD. v. WATSON, [1908] S. C. 888—Ct. of Sess.

**(b) Allotment.**

**42. Minimum Subscription—"Paid to and received by the Company"—Cheques received but held over—Liability of Individual Directors—Directors not Present at Meeting—Confirmation of Minutes—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 4, 5.**—The plaintiff applied for 100 shares in a company on the faith of a prospectus which offered 20,000 shares to the public and stated that no allotment would be made unless 15,000 shares had been applied for and

**Shares—Continued.**

the application money paid. The directors proceeded to allotment when 15,000 shares had been applied for, but in some cases the application money had been paid by cheques which had not been cleared. The plaintiff paid the full amount of his shares. The company went into liquidation, and it appeared that the company was insolvent and the shares worthless. The plaintiff then sued one of the directors, claiming repayment of the money paid on application for the shares under sect. 4 (4), and compensation for loss under sect. 5 of the Companies Act, 1900. The defendant was not present at the meeting of the board at which the allotment was made, but was present at subsequent meetings at which the minutes were confirmed and a resolution passed to apply for a certificate to commence business.

**HELD**—(1) that payment by cheque is not payment within sect. 4 of the Companies Act, 1900, until the cheque is cleared, and that the allotment was a contravention of sect. 4.

(2) That sect. 4 (4) applies only before allotment. The only liability of the directors after allotment is the liability to make good the loss under sect. 5, sub-sect. 2, of the Act, and such liability depends upon "knowledge."

And (3) that on the evidence the defendant was not aware of the facts and had not knowingly contravened the Act.

A director cannot escape liability under sect. 5 (2) by ignorance of the law, but only by ignorance of the facts which amount to a contravention.

A director who assents to the confirmation of minutes is not liable for an act done at the preceding meeting in his absence, if such act was complete without further confirmation.

**BURTON v. BEVAN**, [1908] 2 Ch. 240; 77 [L. J. Ch. 591; 99 L. T. 342; 15 Manson, 272—Neville, J.

**43. Minimum Subscription**—"Paid to and Received by the Company"—*Cheques Received, but held over—Paid on Presentment—Irregular Allotment—Notice by Applicant avoiding—Sufficiency of Notice—Time for Giving—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 4, 5.*—Cheques received on the day of allotment from applicants for shares, but held over until a later date, do not (although duly honoured on presentment) represent money "paid to and received" by the company before allotment within the meaning of sect. 4 of the Companies Act, 1900.

*Mears v. Western Canada Pulp and Paper Co.* ([1905] 2 Ch. 353; 74 L. J. Ch. 353; 93 L. T. 150; 21 T. L. R. 599, 661; 12 Manson, 295—C. A.) applied.

*Glasgow Pavilion, Ltd. v. Motherwell* ((1903) 6 F. 116—Ct. of Sess.) distinguished.

If an applicant desires under sect. 5 to avoid an allotment made in contravention of sect. 4, it is sufficient for him to give notice of avoidance within the time prescribed, *i.e.*, one month after the statutory meeting; actual legal proceedings

need not necessarily be commenced within the month.

*Semble*, this notice need not state the ground for avoiding the allotment.

**IN RE NATIONAL MOTOR MAIL COACH CO.**, [LD.; ANSTIS' & McLEAN'S CLAIMS, [1908] 2 Ch. 228; 77 L. J. Ch. 796; 99 L. T. 334—Eady, J.

**44. Minimum Subscription—Statement of—Articles of Association—Prospectus—Sufficiency of Statement—Allotment—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 4, 10.**—By the articles of association of a company it was provided as follows: "If the company shall offer any of its shares to the public for subscription, the directors shall not make any allotment thereof unless and until 10 per cent. of the shares so offered shall have been subscribed, and the sums payable on application shall have been received by the company; but this provision is no longer to apply after the first allotment of shares offered to the public for subscription has been made." The prospectus issued by the public contained only the following statement as to the minimum subscription: "The minimum subscription is fixed by the articles of association at 10 per cent. of the shares offered."

**HELD**—that there had been in the case of both the articles of association and the prospectus a sufficient compliance with the requirements of sects. 4 and 10 of the Companies Act, 1900, as to the minimum subscription, there being a statement of an amount as to such minimum subscription which was ascertained as soon as it was known what shares the directors were offering for public subscription.

**IN RE WEST YORKSHIRE DARRACQ AGENCY**, [LD., 25 T. L. R. 77; [1908] W. N. 236—Neville, J.

**45. Minimum Subscription for Allotment—Two Prospectuses Issued—Omission from one Prospectus of Statement as to Minimum Subscription—Cancellation of Allotment—Companies Act, 1900 (63 & 64 Vict. c. 48), ss. 4, 5, 9, 10.**—Sect. 4 of the Companies Act, 1900, applies to every prospectus offering shares to the public on the basis of which an applicant has actually subscribed for shares. Therefore, where a company issued a prospectus in the English language which stated the minimum subscription upon which the company might proceed to allotment, and another prospectus in the French language which did not in terms state such minimum subscription, a person who applied for shares on the basis of the latter prospectus was held entitled to have the allotment to him of shares cancelled and his application money repaid.

**ROUSSELL v. BURNHAM**, 25 T. L. R. 61; [1908] [W. N. 228—Parker, J.

**(c) Calls.**

*See* No. 40, *supra*.

**(d) Certificate.**

[No paragraphs in this vol. of the Digest.]

**(e) Forfeiture.**

*See* No. 40, *supra*.



## Shares—Continued.

## (f) Issued at a Discount.

[No paragraphs in this vol. of the Digest.]

## (g) Issued not for Cash.

[No paragraphs in this vol. of the Digest.]

## (h) Transfer.

**46. Forged Transfer—Request to Bank of England to Transfer—Stockbroker Identifying Transferor—Liability of Stockbroker—Damages, Measure of.**—A stockbroker, acting *bona fide*, filled in a form containing particulars of the name of a person alleged to be desirous of transferring certain India stock standing in her name in the books of the Bank of England, and of the amount of the stock, and sent the form to the Bank, from which form the Bank prepared the transfer in their books, and later in the day he attended himself with the supposed transferor and identified her to the Bank officials. The stockbroker was on the Bank's list of persons who were entitled to identify transferors of stock, and he was paid for the transaction by the transferor and not by the Bank. The supposed transferor thereupon signed a transfer of the stock in the books of the Bank in the name of the owner thereof, and the stock was subsequently transferred to purchasers for value in reliance upon the genuineness of the transfer. In fact, the signature of the owner of the stock was forged, and she had not authorised the transfer, and the Bank, on discovering the fraud, purchased an equivalent amount of stock in the market so as to replace the stock fraudulently transferred. In an action by the Bank against the stockbroker, who admittedly acted in good faith and was misled as to the identity of the transferor, to recover the sum paid in order to replace the stock:—

**HELD** by Farwell and Kennedy, L.JJ. (Vaughan Williams, L.J., dissenting)—that the defendant, by taking the form giving particulars of the stock and the name of the transferor to the Bank, and identifying the transferor as the owner thereof, thereby requested the Bank to perform a ministerial statutory duty, namely, to permit the transferor to make the transfer, and he thereby contracted to indemnify the Bank against the loss caused thereby.

*Sheffield Corporation v. Barclay* ([1905] A.C. 392; 74 L. J. K. B. 747; 69 J. P. 385; 54 W. R. 49; 93 L. T. 83; 21 T. L. R. 642—H. L.) followed.

**HELD**, also, that as the Bank was estopped from denying the validity of the transfers to the purchasers for value without notice, and was unable to create stock in order to replace the stock fraudulently transferred, it was bound to purchase stock upon the market for that purpose, and was entitled to recover from the defendant the amount paid for the purchase of the stock.

Decision of A. T. Lawrence, J. ([1907] 1 K. B. 889; 76 L. J. K. B. 504; 96 L. T. 636; 23 T. L. R. 374) affirmed.

**BANK OF ENGLAND v. CUTLER**, [1908] 2 K. B. [208; 77 L. J. K. B. 889; 98 L. T. 336; 24 T. L. R. 518; 52 Sol. Jo. 442—C. A.

## (i) Underwriting Agreements.

[No paragraphs in this vol. of the Digest.]

## XXXI. UNREGISTERED COMPANIES.

[No paragraphs in this vol. of the Digest.]

## XXXII. VOTING.

[No paragraphs in this vol. of the Digest.]

## XXXIII. WINDING-UP.

## (a) General.

**47. Illegal Business—"Premium Bonds"—Lottery—Fraudulent Company—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 79, sub-s. 5.**—A company formed for the purpose chiefly of dealing in "premium bonds" was held to be carrying on an illegal business, the premium bonds coming within the Gaming Acts as lotteries, and to be also carrying on the business fraudulently, and a compulsory winding-up order was made.

**IN RE THE INTERNATIONAL SECURITIES CORPORATION, LD.**, 99 L. T. 581; 24 T. L. R. 837—Eady, J.

Affirmed, 25 T. L. R. 31—C. A.

## (b) Assets.

[No paragraphs in this vol. of the Digest.]

## (c) Compulsory Orders.

**48. Non-commencement of Business for a Year—Company Registered in England to Protect Name of Foreign Company—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 79.**—The Court ordered the winding up of an English company formed merely to protect in England the name of a company registered in Guernsey. The companies had the same objects and the same directors and officers; the English company had a capital of £10, none of which had been paid up, and it had never done any business. The Guernsey company had recently complied with the requirements of sect. 35 of the Companies Act, 1907, as regards companies incorporated abroad, but having a place of business in the United Kingdom.

**IN RE CEMENTUM (PARENT) CO., LD.**, [1908] [W. N. 257—Neville, J.

## (d) Contributories.

See also No. 41, *supra*.

**49. Transfer of Shares to Escape Liability—Equities as between Transferor and Transferee—Colourable Transfer.**—Where shortly before a company goes into liquidation a shareholder transfers his partly-paid shares to another person so as to avoid liability and under such circumstances that the transferee has a right to be relieved in equity against the transfer, the transfer is not *bona fide*, but colourable, and the Court will place the transferor on the list of contributories.

*Costello's Case* ((1860) 2 De G. F. & J. 302) and *Budd's Case* ((1861) 3 De G. F. & J. 297) applied.

**IN RE DISCOVERERS FINANCE CORPORATION**, [LD., [1908] 1 Ch. 141; 77 L. J. Ch. 36; 97 L. T. 757; 14 Manson, 333; 24 T. L. R. 12—Parker, J.



**Winding-up—Continued.**

Appeal dismissed on agreed terms, [1908] 1 Ch. 334; 77 L. J. Ch. 288; 15 Manson, 57—C. A.

**(e) Creditors.**

[No paragraphs in this vol. of the Digest.]

**(f) Examination.**

[No paragraphs in this vol. of the Digest.]

**(g) Fraudulent Preference.**

[No paragraphs in this vol. of the Digest.]

**(h) Liquidators.**

**50. Liquidator Selling Mortgaged Property—Consent of Mortgagee—Proceeds Insufficient—Costs of Liquidator.**—In a compulsory winding-up the liquidator, with a mortgagee's consent, sold the property mortgaged to him. The proceeds were not sufficient to pay the mortgage debt in full.

HELD—that the liquidator might retain the costs of realisation out of the proceeds.

IN RE NORTHERN MILLING CO., LD., [1908]  
[1 I. R. 473—Barton, J.]

**(i) Petition.**

[No paragraphs in this vol. of the Digest.]

**(k) Practice.**

**51. Petitioner not Appearing in Support of Petition—Power to Substitute a Petitioner—Companies (Winding-up) Rules, 1903, r. 36.**—Where upon a petition for winding up a company the petitioner does not appear at the hearing, the Court has no power, under r. 36 of the Companies (Winding-up) Rules, 1903, to substitute as petitioner a creditor or contributory.

IN RE VANGUARD MOTORBUS CO., LD., 24  
[T. L. R. 526—Neville, J.]

**52. Winding-up Petition—Non-payment of Costs Awarded by the Court of Appeal—Application for Adjournment Pending Appeal to House of Lords.**—Litigation took place between the B. L. A. Co. and the B. O. Co., in which the former were successful in the first instance. This decision was reversed by the Court of Appeal, and the B. L. A. Co. was ordered to pay the costs, which, when taxed, amounted to over £3,000. The whole of the issued capital of the B. L. A. Co. had been paid up and the greater part of the money had been spent in the recent litigation. The B. O. Co. now petitioned for the winding up of the B. L. A. Co. The B. L. A. Co. asked that the petition might be adjourned until an appeal to the House of Lords had been heard. Security for the costs of the appeal to the House of Lords had been given.

HELD—that the B. L. A. Co. not being willing to give security for the costs already incurred, the petition could not be adjourned.

IN RE BRITISH LIQUID AIR CO., LD., 126 L. T.  
[Jo. 7—Neville, J.]

**(l) Proof.**

[No paragraphs in this vol. of the Digest.]

**(m) Reconstruction.**

See XXIII., *supra*.

**(n) Surplus Assets.**

See No. 7, *supra*.

**XXXIV. VOLUNTARY WINDING-UP.****(a) General.**

**53. Interest on Debts—Interest since Judgment—Voluntary Winding-up.**—Sect. 10 of the Judicature Act, 1875, applies the rule in bankruptcy as to interest on debts to the winding-up of an insolvent company, although the winding-up is voluntary, and no claim can be sustained for interest subsequent to the judgment.

IN RE SALT & CO., 98 L. T. 558; [1908] W. N.  
[63—Neville, J.]

**54. Resolution—Validity of—Resolutions for Voluntary Winding-up and Reconstruction—Invalidity of Reconstruction Scheme.**—The fact that a resolution for a scheme of reconstruction is held to be invalid does not invalidate a resolution for a voluntary winding-up passed at the same time to further the reconstruction.

*Cleeve v. Financial Corporation* ((1873) L. R. 16 Eq. 363; 43 L. J. Ch. 54; 29 L. T. 89) approved.

THOMPSON *v.* HENDERSON'S TRANSVAAL  
[ESTATES, LD., [1908] 1 Ch. 765; 77 L. J. Ch. 501; 98 L. T. 815; 24 T. L. R. 539; 52 Sol. Jo. 456; 15 Manson, 230—C. A.]

**(b) Liquidators.**

**55. Removal of Liquidator—Who may apply for—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 138, 141—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 25.**—Where a company is being wound up voluntarily an application to the Court for the removal of the liquidator cannot be made by a person who is not the liquidator, or a contributory, or a creditor.

A creditor may perhaps be authorised to so apply by sect. 25 of the Companies Act, 1900.

IN RE NEW DE KAAP, LD., [1908] 1 Ch. 589;  
[77 L. J. Ch. 374; 98 L. T. 665; 15 Manson, 149—Neville, J.]

**(c) Reconstruction.**

See XXIII., *supra*.

**(d) Supervision Orders.**

[No paragraphs in this vol. of the Digest.]

**(e) Surplus Assets.**

See No. 7, *supra*.

## COMPOSITION WITH CREDITORS.

See BANKRUPTCY AND INSOLVENCY.

**COMPOUNDING FELONY.**

*See CRIMINAL LAW.*

**COMPULSORY PURCHASE AND COMPENSATION.****I. RIGHT TO TAKE LAND.**

- (a) In General . . . . . 93  
[No paragraphs in this vol. of the Digest.]
- (b) Superfluous Land . . . . . 93  
[No paragraphs in this vol. of the Digest.]

**II. COMPENSATION.**

- (a) Principle of Assessment . . . . . 93
- (b) Injurious Affection . . . . . 94

**III. PROCEDURE.**

- (a) Generally . . . . . 95  
[No paragraphs in this vol. of the Digest.]
- (b) Notice to Treat . . . . . 95  
[No paragraphs in this vol. of the Digest.]
- (c) Costs . . . . . 95
- (d) Taking Part Only . . . . . 96  
[No paragraphs in this vol. of the Digest.]

**IV. PURCHASE MONEY IN COURT . . . . . 96****V. PARTICULAR CLASSES OF UNDERTAKINGS.**

- (a) Railways . . . . . 97
- (b) Waterworks . . . . . 99
- (c) Housing of the Working Classes Acts . . . . . 99  
[No paragraphs in this vol. of the Digest.]
- (d) Education Authorities . . . . . 99  
[No paragraphs in this vol. of the Digest.]

*And see LANDLORD AND TENANT ;  
SEWERS AND DRAINS, No. 3.*

**I. RIGHT TO TAKE LAND.****(a) In General.**

[No paragraphs in this vol. of the Digest.]

**(b) Superfluous Land.**

[No paragraphs in this vol. of the Digest.]

**II. COMPENSATION.****(a) Principle of Assessment.**

1. *Lands in Lease Severed—Vendor's Right to Covenant from Lessee for Payment of Full Rent.*—W. was the lessor and S. was the lessee of premises the frontage of which was compulsorily acquired by a tramway company under statutory powers. W. had claimed a certain sum as the present value of the frontage deferred until the expiration of the lease, and had accepted an offer by the company of a smaller sum "for the purchase of the interest claimed by you." S. on assigning the lessee's interest in the frontage covenanted with the company to pay the whole rent reserved by his lease. On an originating summons, W. asked to be declared entitled to require the company to procure from S. at their own expense a covenant

by S. with W. to pay the whole rent reserved without deduction for severance.

**HELD**—that as W. had not put forward his claim on the ground that he would be deprived of any portion of the rent, there was no contract between W. and the company for the covenant as asked.

**IN RE WAY AND LONDON UNITED TRAMWAYS [Co., LD., 125 L. T. Jo. 594—Eve, J.]**

2. *Notice to Treat—Creation of New Interest—Surrender of Lease—Taking New Lease—Inoperative Surrender—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 18.*—In March, 1905, the agent of the mortgagees in possession of certain premises agreed to let the premises for three years to a tenant. In May, 1905, the defendants served on the mortgagees' agent notice to treat under the Lands Clauses Act, 1845, for the purchase of the premises. In January, 1906, the tenant agreed with the plaintiff to stand possessed of the lease of the premises in trust for the plaintiff. Neither the tenant nor the plaintiff had any notice or knowledge of the notice to treat. In February, 1906, the mortgagees' agent took a surrender of the existing lease of the premises, and granted a new lease to the plaintiff for three years from that date. The new lease, apart from its length, contained terms similar to those in the original lease. In March, 1907, the defendants entered upon the premises under the original notice to treat. In an action of trespass it was agreed that the Judge should decide the question whether the plaintiff was entitled to compensation under the Lands Clauses Act, 1845. The plaintiff contended that he was entitled to compensation in respect of the unexpired year of the original lease which was granted before the notice to treat was served upon the mortgagees. The defendants contended that, as the original lease was surrendered upon grant of the new tenancy, the plaintiff at the date of the alleged trespass had no interest in the premises in respect of which he could bring an action of trespass or claim compensation.

**HELD**—that the new tenancy being void by reason of the service of the notice to treat before its creation, the surrender of the old lease, for which it was the consideration, was inoperative, and the original term of three years remained in existence, and that therefore either the plaintiff or the original tenant, as trustee for him, was entitled to compensation in respect of the unexpired term of the original lease.

Decision of Jelf, J. ([1908] 1 K. B. 611 ; 77 L. J. K. B. 316 ; 24 T. L. R. 240) affirmed on slightly different grounds.

**ZICK v. LONDON UNITED TRAMWAYS CO., LD.,**  
[1908] 2 K. B. 126 ; 77 L. J. K. B. 942 ; 72 J. P. 257 ; 98 L. T. 841 ; 24 T. L. R. 577 ;  
52 Sol. Jo. 456—C. A.

**(b) Injurious Affection.**

3. *Street Improvement—Warehouse of Railway Company—Loading and Unloading Vans across Pavement—Statutory Power to Stop up Pavement—User Amounting to Stopping up—*

**Compensation—Continued.**

*Compensation for Obstruction of such User.*—A railway company were empowered by Act of Parliament to stop up a certain street for the purpose of providing additional warehouses. The company stopped up and enclosed part of such street and formed a *cul-de-sac*. They constructed a warehouse abutting upon the pavement in such *cul-de-sac*. The warehouse had flaps which opened across such pavement, and for forty years the company loaded and unloaded goods from such flaps across the pavement into and from vans standing in the *cul-de-sac* from 6 a.m. to 7 p.m. daily.

The London County Council by a private Act, which incorporated the Lands Clauses Acts, were empowered to make a new street. The new street included the pavement above referred to. The company claimed compensation (*inter alia*) for injurious affection of the above-mentioned warehouse by reason of the works of the Council preventing them from delivering goods from the warehouse across the pavement to vans in the way they had theretofore done.

**HELD**—that the use which the railway company had made of the pavement amounted to a stopping up of such pavement under their statutory powers above referred to, although such pavement had not been actually stopped up or enclosed; that the Council were bound to acquire an easement over it for the purpose of making the new street; and that the company were entitled to compensation for injurious affection of the warehouse.

Decision of Kennedy, J. (71 J. P. 95; 95 L. T. 803; 5 L. G. R. 162) affirmed on other grounds.  
IN RE GREAT EASTERN RY. CO. AND LONDON [COUNTY COUNCIL, 72 J. P. 1; 98 L. T. 116—C. A.]

**III. PROCEDURE.****(a) Generally.**

[No paragraphs in this vol. of the Digest.]

**(b) Notice to Treat.**

[No paragraphs in this vol. of the Digest.]

**(c) Costs.**

**4. Costs of Conveyance—Copyholds—Customary Fee Outstanding—“Outstanding Interest”**—*Costs of Getting in Interest—Fines—Steward’s Fees—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 82.*—The promoters of an undertaking authorised by statute, which incorporated the Lands Clauses Act, 1845, agreed to purchase under their statutory powers certain land of copyhold tenure. The vendors were the trustees under a will, but they had not been admitted as tenants of the manor on the court rolls, there having been no one admitted since the death of the former trustees.

**HELD**—that as the legal customary fee was in the heirs of the late trustees, their interest was an “outstanding interest” within sect. 82 of the Lands Clauses Act, 1845, and that the promoters must pay, as part of the costs of the conveyance of the land, the costs necessary to get in that outstanding interest, *i.e.*, the steward’s fees and

law costs of admission, but (per Cozens-Hardy, M. R., and Moulton, L. J.) not the fine payable to the lord of the manor on admission.

*In re London United Tramways Act, 1900, ([1906] 1 Ch. 534; 75 L. J. Ch. 223; 54 W. R. 328; 94 L. T. 608; 22 T. L. R. 286—Eady, J.),* overruled as to the lord’s fine.

*In re Bear Island Defence Works and Doyle ([1903] 1 I. R. 164)* doubted on one point.

IN RE THAMES TUNNEL (ROTHERHITHE AND [RATCLIFF] ACT, 1900, [1908] 1 Ch. 493; 77 L. J. Ch. 330; 72 J. P. 153; 98 L. T. 488; 24 T. L. R. 346—C. A.]

**5. Costs of Conveyance—Death of Vendor before Completion—Vendor’s Will—Probate—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 82.**—B. had contracted under the Lands Clauses Act, 1845, to sell certain leasehold property to the London County Council. Before completion he died, having by his will given all his property to his wife and appointed her sole executrix. She proved the will and completed the assignment of the leaseholds.

**HELD**—that the costs of obtaining probate of the vendor’s will did not come within those which the Council were liable to pay under sect. 82 of the Lands Clauses Act, 1845.

IN RE ELEMENTARY EDUCATION ACTS, 1870, [1873, [1908] 2 Ch. 503; 72 J. P. 445; 99 L. T. 467; 24 T. L. R. 808; 52 Sol. Jo. 681—Joyce, J.]

Affirmed, [1908] W. N. 226; 25 T. L. R. 78—C. A.]

**6. Costs of Conveyance—Special Agreement as to Vendor’s Costs—Practice—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 82, 83.**—Discussion of the proper practice as to orders for taxation of costs when promoters purchase by agreement and make a special agreement as to paying the vendor’s costs.

IN RE MIDDLESEX LIGHT RAILWAYS ORDER, [1903, [1908] W. N. 167—Eady, J.]

**(d) Taking Part Only.**

[No paragraphs in this vol. of the Digest.]

**IV. PURCHASE MONEY IN COURT.**

**7. Payment out of Court—Person “absolutely entitled”**—*Municipal Corporation—London Government Act, 1899 (62 & 63 Vict. c. 14), s. 6, sub-s. 5—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 69.*—A metropolitan borough council were the owners of land which the London County Council took from them under compulsory powers pursuant to the Lands Clauses Act, 1845. The purchase money having been assessed under Act, the County Council paid the amount into Court. The Local Government Board had refused to give any consent to the sale, under sect. 6, sub-sect. 5, of the London Government Act, 1899, upon the ground that the County Council had overriding compulsory powers to purchase the land. Upon a petition by the borough council for payment of the purchase money out of Court:—



**Purchase Money in Court—Continued.**

**HELD**—that the borough council were “absolutely entitled” to the money within sect. 69 of the Lands Clauses Act, 1845, and that they were therefore entitled to have the money paid out to them.

EX PARTE WOOLWICH CORPORATION, 24 T. L. R. [370; [1908] W. N. 56—Warrington, J.

**8. Payment out of Court—Sale of Fund—Broker's Commission—Two Funds—Apportionment of Commission—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18).]**—Where a petition is presented for the payment out of Court of two funds of unequal value which were paid in under the Lands Clauses Act, 1845, the funds representing the purchase money of lands acquired by two railway companies respectively, it is the settled practice that the brokerage on selling the two funds must be borne by the two companies in equal shares and not apportioned according to the values of the funds.

EX PARTE EMANUEL HOSPITAL, 24 T. L. R. [261—Eve, J.

**9. Summons for Payment out and for Other Matters—Order as to One Point—Failure of Rest of Summons—Costs—What Costs included—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 76, 80.]**—A fund of money, representing the purchase money of houses which had been taken compulsorily, was in Court, and the plaintiffs on an originating summons asked for inquiries as to children, a declaration on the construction of a will, payment out of the fund in accordance with the result of the inquiries and declaration, and an order for payment of the costs by the promoters of the undertaking. The summons failed, except that an order was made that a sum representing interest should be paid to the plaintiffs, and that the promoters should pay to the plaintiffs “their costs (including therein all reasonable charges and expenses incident thereto) of obtaining this order and of all proceedings relating thereto.”

**HELD**—that the costs payable by the promoters did not include all the costs incurred in connection with the parts of the summons which had failed, but must be confined to the costs of obtaining the order as actually made.

IN RE JACOBS, BALDWIN v. PESCOTT, [1908] [2 Ch. 691—Warrington, J.

## V. PARTICULAR CLASSES OF UNDERTAKINGS.

### (a) Railways.

**10. Minerals left Unworked—Limestone—Notice to Leave Unworked—Compensation—London and Birmingham Railway Act, 1833 (3 Will. 4, c. xxxvi.), s. 55.]**—A cement company, who were the owners of certain limestone, gave notice under sect. 55 of the London and Birmingham Railway Act, 1833 (which section was regarded as being identical with sect. 78 of the Railways Clauses Consolidation Act, 1845), of their intention to work certain limestone near and under the

Y.D.

railway. The railway company thereupon gave separate notices to treat in respect of the limestone lying near the railway, and in respect of that underlying it. The cement company owned extensive beds of limestone, which they used for the purpose of manufacturing cement. The limestone included in the notices to treat would have been the first stone used by the company, but their other limestone was equally convenient and accessible, and they were able to make the same profits out of such other limestone. It was admitted that except to the claimants the stone had, owing to cost of carriage, no market value.

**HELD**—as regards the adjacent stone, that the compensation payable to the cement company was the value of the limestone to them as the owners thereof, such value to be assessed on the basis of what they might fairly be expected to have made out of such limestone by working it in the ordinary and reasonable manner in which it would have been worked but for the notice to treat; and that in assessing such compensation an arbitrator was entitled to take into consideration the profit which the cement company would have made by turning the limestone into cement as a guide to enable him to arrive at the value of the limestone to the company, but that he was not entitled to take that profit as the measure of such value.

**HELD**—as regards the underlying stone, that no compensation was payable, because the special Act prohibited the opening of any quarry “in” the railway, and this prohibition included the use of underground workings which would let down the railway.

Decision of Bray, J. ([1908] 1 K. B. 925; 72 J. P. 116; 24 T. L. R. 341) reversed.

RUGBY PORTLAND CEMENT CO. v. LONDON [AND NORTH WESTERN RY. CO., [1908] 2 K. B. 606; 77 L. J. K. B. 1096; 72 J. P. 245; 98 L. T. 880; 24 T. L. R. 561—C. A.

**11. Superfluous Land—Land Vertically over Tunnels—Power to Sell—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 127.]**—In 1850 “all that tunnel” marked on a plan was granted to the predecessors of the Lancashire and Yorkshire Railway Company. In 1888 “the full and free right and liberty to construct and for ever enjoy” a second tunnel parallel to the first was granted to the Lancashire and Yorkshire Railway Company, saving to the grantor all the land lying above this tunnel which was subject to a lease. In 1889 the leasehold interest in the land in question was assigned to the company, who now had agreed to sell the residue of the lease except their interest in the tunnels. Objection was taken that the rule in *Re Metropolitan Ry. Co. and Cosh* (13 Ch. Div. 607) was applicable, and that the company had no power to sell the hereditament situate vertically above the two tunnels.

**HELD**—that if the land were superfluous within sect. 127 of the Lands Clauses Consolidation Act, 1845, the rule in *Re Metropolitan Ry. Co. and Cosh* (*supra*) was applicable notwithstanding the interest was leasehold and the

**Practical Classes of Undertakings—Continued.**

company had only an easement in the second tunnel, and that the fact that the sections of the company's Acts did not prescribe a period for reversioning of lands and were enabling sections did not enable the Court to hold that they conferred a power to sell in the case of land over tunnels.

IN RE LANCASHIRE AND YORKSHIRE RY. CO.  
[AND EARL OF DERBY'S CONTRACT, 126 L. T.  
Jo. 31—Eve, J.]

**(b) Waterworks.**

**12. Special Adaptability of Land—Reservoir—User Impossible without Parliamentary Powers or Concurrence of Purchasers—Right of Arbitrator to take into Consideration.**—In an arbitration under the Lands Clauses Acts, the umpire found that certain land which was being compulsorily purchased by the board for the construction of a reservoir had peculiar natural advantages as a reservoir site in conjunction with other land belonging to another owner; but that the construction of a reservoir by the claimant and the owner of the other land would be interfered with by a line of pipes which had been previously constructed by the board, and could not be carried out without the board's consent.

**HELD**—that the special adaptability of the land for a reservoir site was a fit and proper matter for consideration in assessing the compensation to be paid by the board, although in the absence of the board's concurrence the site could only be used for a reservoir by obtaining parliamentary powers.

IN RE LUCAS AND CHESTERFIELD GAS AND [WATER CO., [1908] 1 K. B. 571; 77 L. J. K. B. 374; 72 J. P. 76; 98 L. T. 37; 24 T. L. R. 229; 52 Sol. Jo. 173; 6 L. G. R. 150—Bray, J.  
Affirmed, 77 L. J. K. B. 1009; 72 J. P. 437; 24 T. L. R. 858; 6 L. G. R. 1106—C. A.]

**(c) Housing of the Working Classes Acts.**

[No paragraphs in this vol. of the Digest.]

**(d) Education Authorities.**

[No paragraphs in this vol. of the Digest.]

**CONCEALMENT OF BIRTH.**

See CRIMINAL LAW AND PROCEDURE.

**CONDITIONS OF SALE.**

See SALE OF GOODS; SALE OF LAND.

**CONFESSIONS.**

See EVIDENCE.

**CONFLICT OF INTEREST AND DUTY.**

See TRUSTS AND TRUSTEES.

**CONFLICT OF LAWS.**

	COL.
(a) Miscellaneous . . . .	100
(b) Domicil . . . .	101
(c) Foreign Judgments . . . .	101
(d) Marriage and Divorce . . . .	103
(e) Marriage Settlements . . . .	103
[No paragraphs in this vol. of the Digest.]	
(f) Wills and Intestacy . . . .	103

And see ACTION; BILLS OF EXCHANGE;  
EXECUTORS; HUSBAND AND WIFE;  
LUNATICS; WILLS.

**(a) Miscellaneous.**

**1. Agreement to Refer Disputes to Foreign Court—Staying Proceedings.**—An agreement to refer disputes to a foreign tribunal entitles a defendant to a stay of proceedings in this country, unless the plaintiff makes out a case for an injunction.

KIRCHNER & Co. v. GRUBAN, 53 Sol. Jo. 151—  
[Eve, J.]

**2. Dutch Law—Husband and Wife—Community of Property—Division on Dissolution of Marriage.**—The plaintiff, who was of English birth, was married to the defendant, a Dutchman, domiciled in Holland. In 1897 the marriage was dissolved by a decree of the Dutch Court. At the time of the marriage the defendant carried on a business of dealing in cardboard partly on commission and partly on his own account, which business he had continued to carry on after the dissolution of the marriage. According to Dutch law, which regulated the marriage, there was during the marriage absolute community of property between husband and wife, the husband having sole management, and on dissolution of the marriage either party was entitled to an equal division of the property. No division had been made or demanded in 1897 or since, till the present action.

**HELD**—that the plaintiff was entitled to a moiety of the excess of assets over liabilities of the business at the date of the dissolution of the marriage with interest at 4 per cent., and to a moiety of all the other common property at the same date, of the proceeds of any sale thereof, and of the rents and dividends since accrued; but that she was not entitled to trace the business assets to specific property existing at the present time nor to half the profits since the dissolution of the marriage nor to half the value of the goodwill at the date of dissolution.

SWAAGMAN v. SWAAGMAN, *Times*, February 17th,  
[1908—Joyce, J.]



**Conflict of Laws—Continued.**

**2a. Partnership—Real Property in Colony—Proceedings in Colonial Court—Receiver—Subsequent Proceedings in England—Staying such Proceedings—Rule as to Concurrent Proceedings in England and Colony.**—Four persons were interested as co-partners in mining property in Nova Scotia, where one of them resided as their manager. The other three resided in England. One of the latter, while temporarily resident in Nova Scotia, commenced there a dissolution action in which the other partners all appeared. While such proceedings were in progress, another partner commenced a similar action in the Lancashire Palatine Court. The Vice-Chancellor refused to stay this action, and restrained the plaintiff in the Nova Scotia action from further prosecuting it.

**HELD**—that this injunction should be discharged, and the action in the Palatine Court stayed.

Statement of the principles guiding an English Court where concurrent actions for similar relief are pending here and in a colonial Court.

JOPSON *v.* JAMES, 77 L. J. Ch. 824—C. A.

**(b) Domicil.**

**3. Abandonment of Domicil of Origin—Going to Colony under Medical Advice—Long Residence and Work in Colony—Animus manendi—Evidence of Acquiring Domicil by Choice.**—J., who was born in Wales in 1853, lived there until the year 1891, in which year, being found to be suffering from consumption, he was medically advised, if his life was to be prolonged, to go to South Africa. Accordingly he went to Cape Colony and remained in South Africa, with the exception of a visit to England in 1902, being employed at the diamond mines, until his death in May in the year 1905. J. had on leaving England a small farm in Wales, which he retained until his death, disposing of it by a will executed in 1904, in which he was described as "late of" a Welsh parish. There was evidence of statements by J. in conversation and in his letters speaking of going "home," and of his using similar expressions: pointing to an intention to end his days in Wales, but during his visit to England in 1902 he told his friends that it was his last visit, and, his health being better in South Africa, he would permanently remain there.

**HELD**—that J. had no intention of abandoning the privileges and immunities which constituted his birthright; that the onus of showing that he had done so had not been discharged; and that he was a domiciled Englishman at the date of his death.

RE JAMES, JAMES *v.* JAMES, 98 L. T. 438—  
[Eve, J.]

**(c) Foreign Judgments.**

**4. Action upon—Judgment by Default in French Court—Subsequent Appearance to Protect Goods from Execution—Submission to Jurisdiction.**—The plaintiffs, a French firm, brought an action in the Tribunal of Commerce

at Paris for breach of contract by non-delivery of goods. The defendants had knowledge of this action and let judgment go by default. Subsequently the plaintiffs, having applied to the Court at Havre, were about to levy execution on the defendants' goods there, when the defendants put in an appearance, contending that the French Courts had no jurisdiction to deal with their goods. To an action now brought on the foreign judgment the defendants pleaded that their appearance before the French Court in order to protect their goods was involuntary, and not a submission to the jurisdiction.

**HELD**—that there was no authority for saying that an appearance to protect goods in the possession of a foreign Court is involuntary, and that the defendants had an opportunity of defending the case on its merits and were bound by the judgment, which the Courts of this country would enforce.

GABORIAU AND H. BOURGUIGNON & Co. *v.*  
[D. MAXWELL & Co., *Times*, December 12th,  
1908—Pickford, J.]

**5. Enforcing—Decree of Indian Court against Person Domiciled in England.**—The defendant was sued on a decree pronounced by a first-class Subordinate Judge in Poona, dated March 12th, 1907. Process was issued in that Court on December 1st, 1906, and reached the defendant about Christmas, 1906, and it required him to enter an appearance before January 7th, 1907. The defendant was domiciled and resident in this country when the summons reached him, and he had had no opportunity of entering an appearance within the time specified. It was stated on the face of the decree that the defendant had ceased to be domiciled in India in 1900.

**HELD**—that the decree could not be enforced in an English Court.

JAFFER AND OTHERS *v.* WILLIAMS, 25 T. L. R.  
[12—Bucknill, J.]

**6. Enforcing—Partnership in Foreign Country to work properly there—Winding up Partnership—Partner in England—Submission to Foreign Jurisdiction.**—The defendant, whilst residing in Western Australia, entered into a partnership with the plaintiffs for working a gold mine there. The defendant subsequently left Western Australia and came to England and resided here, and, while he was here, an action was brought by the plaintiffs against him in the Court of Western Australia claiming that the partnership should be dissolved, that the mine should be sold, and that the accounts of the partnership should be taken. The writ in the action was served upon him in England. The defendant did not appear in the action, but he was kept informed from time to time of the proceedings in the action, and judgment was pronounced as claimed. Upon the accounts being taken the partnership liabilities were found to be £7,687 9s. 9d. The plaintiffs sued the defendant in England to recover one-sixth of that sum, being the defendant's share thereof.

**HELD**—that the action could not be maintained. The defendant was not bound by the



**Conflict of Laws—Continued.**

foreign judgment, not being domiciled or resident in Australia at the date of the action, and not having appeared to the writ or agreed to submit to the jurisdiction. The mere fact that he was the owner of real property in Western Australia did not give the Courts of that country jurisdiction as against him; nor did he by joining the partnership for working the mine impliedly agree that he should be subject to their jurisdiction in matters connected with the partnership.

*Becquet v. MacCarthy* ((1831) 2 B. & Ad. 951) commented on.

*Sirdar Gurdyal Singh v. Rajah of Faridkote* ([1894] A. C. 670—P. C.) followed.

Decision of Channell, J. ([1907] 1 K. B. 235; 76 L. J. K. B. 147; 96 L. T. 231; 23 T. L. R. 94) reversed.

EMANUEL AND OTHERS *v.* SYMON, [1908] 1 [K. B. 302; 77 L. J. K. B. 180; 98 L. T. 304; 24 T. L. R. 85—C. A.]

**(d) Marriage and Divorce.**

See HUSBAND AND WIFE.

**(e) Marriage Settlements.**

[No paragraphs in this vol. of the Digest.]

**(f) Wills and Intestacy.**

**7. English Will—Land in South Africa—Life Interest—Long Leaseholds—Enjoyment in Specie—Roman-Dutch Law.**—By an English will a domiciled Englishman gave all his real and personal estate in South Africa to his widow during widowhood with remainders over.

HELD—that the Roman-Dutch law of the Transvaal must apply so far as his leaseholds in the Transvaal were concerned; and that the widow was entitled to enjoy them *in specie*, such being proved to be the rule of Roman-Dutch law upon the point.

IN RE MOSES, *MOSES v. VALENTINE*, [1908] 2 [Ch. 235; 77 L. J. Ch. 783; 99 L. T. 519—Eady, J.]

**CONJUGAL RIGHTS.**

See HUSBAND AND WIFE.

**CONSIDERATION.**

See CONTRACT.

**CONSPIRACY.**

See CRIMINAL LAW AND PROCEDURE;  
TORTS; TRADE AND TRADE UNIONS.

**CONTAGIOUS DISEASES.**

See ANIMALS; PUBLIC HEALTH.

**CONTEMPT AND ATTACHMENT.**

COL.

(a) Contempt of Court . . . . .	104
(b) Practice . . . . .	104

[No paragraphs in this vol. of the Digest.]

And see **BANKRUPTCY**, No. 16; **HUSBAND AND WIFE**; **INJUNCTIONS**; **PATENTS**; **TRADE MARKS**; **TRUSTS AND TRUSTEES**, No. 13.

**(a) Contempt of Court.****1. Breach of Injunction—Committal—Service of Order—Production of Original Order.**

*Semble*, in order to justify a motion to commit a man for contempt in disobeying an injunction it is not necessary to prove that the original order was actually produced to him at the time when a copy of it was served on him.

PETTITT *v.* BELL, 52 Sol. Jo. 784—Coleridge, J.

**2. Breach of Undertaking—Committal—Non-service of Order Containing Undertaking.**—Where a party to an action has given in Court an undertaking to do something on or before a certain day and does not carry out the undertaking, it is not necessary, upon an application to have him committed to prison for contempt, to prove service upon him either of a copy of the order containing the undertaking or of the undertaking itself.

RE LAUNDER, *LAUNDER v. RICHARDS*, 98 L. T. [554; [1908] W. N. 49—Warrington, J.]

**3. Breach of Undertaking—Enforcing Undertaking—Corporation—Sequestration—R. S. C., Ord. 42, r. 31.**—Ord. 42, r. 31, of the Rules of the Supreme Court is not intended to alter the practice of the Court as it existed before the promulgation of the Rules, and therefore an undertaking is equivalent to an order for the purposes of that rule, and can be enforced against a corporation by sequestration.

MELBURN *v.* NEWTON COLLIERY, LD., 52 Sol. Jo. [317—Warrington, J.]

**4. Disobedience of Order giving Limited Access to Ward of Court—Principles on which the Court acts.**—The Court possesses an extraordinary jurisdiction in regard to those who are its wards, conferred upon it for the benefit not only of the particular children who are in that position, but of all who now are or shall be hereafter wards of Court. This jurisdiction must be exercised in such a way as will most conduce to their welfare, and will make it generally understood that orders of the Court as to the custody and control of wards are not to be disobeyed with impunity. A breach of such orders cannot be condoned by a mere apology of the offender, or by some more or less severe expression of rebuke by the judge, or by some nominal imprisonment.

GULLY *v.* GULLY, *Times*, March 21st, 1908—[Warrington, J.]

**(b) Practice.**

[No paragraphs in this vol. of the Digest.]

**CONTRACT.**

I. ASSIGNMENT . . . . .	COL. 105
II. BREACH . . . . .	106
III. CONSIDERATION . . . . .	107
IV. CONSTRUCTION . . . . .	107
V. FORMATION . . . . .	111
VI. ILLEGALITY . . . . .	112
VII. IMPOSSIBILITY OF PERFORMANCE .	112
VIII. RECTIFICATION . . . . .	112
IX. STATUTE OF FRAUDS . . . . .	113
X. UNDUE INFLUENCE . . . . .	113

*See also* ARBITRATION; BANKERS AND BANKING; BUILDERS, No. 2; BURIAL; CARRIERS; CONFLICT OF LAWS; EQUITY; ELECTRIC LIGHTING; EVIDENCE; GAMING; INFANTS; INSURANCE; LOCAL GOVERNMENT, Nos. 5, 6; LUNATICS; MASTER AND SERVANT; MISTAKE; PRIVATE BILLS; SALE OF GOODS; SALE OF LAND, AND OTHER HEADINGS INVOLVING CONTRACTS.

For COVENANTS IN RESTRAINT OF TRADE, *see* TRADE.

**I. ASSIGNMENT.**

**1. Music Hall Artist and Agent—Assignment of Part of Salary as Commission—Clause in Contract of Engagement Procured by Agent Prohibiting Assignment of Salary.**—B., by an agreement with S. & Co., dramatic agents, in consideration of the latter having procured for him an engagement with M., authorised M. to deduct from his salary and pay S. & Co.'s commission, as agreed, in any way S. & Co. might deem expedient. Notice in writing of this assignment was given to M. The present action was brought by S. & Co. for a sum alleged to be due under the above agreement. For the defendant B. it was contended that the terms in the agreement did not constitute a valid equitable assignment, and also that the contract of engagement between B. and M., procured by S. & Co., expressly prohibited B.'s assigning his salary, and declared that it should be paid to B. and to no other person, except in the case of death.

**HELD**—that in the agreement sued on there was a valid equitable assignment according to Lord Macnaghten's judgment in *William Brandt's Sons & Co. v. Dunlop Rubber Co.* ([1905] A. C. 454), and that, although M. might bring an action against B. for any damages which might be proved due to the breach of the contract between B. and M., that contract did not in any way prevent that being an equitable assignment which was such apart from B. and M.'s contract.

**TOM SHAW & Co. v. Moss's Empires, Ltd., AND [BASTOW, Times, December 21st, 1908—Darling, J,**

**II. BREACH.**

**1a. Breach of Promise of Marriage—Corroboration—Letters Unanswered—Gift of a Ring.**—[In an action for breach of promise of marriage, the not answering letters may under some circumstances be treated as an admission of the truth of the allegations contained therein. But it is different where there is no evidence justifying the Court in treating the not answering of letters as some evidence of an admission. The mere fact of leaving letters unanswered is not sufficient evidence of corroboration of the promise. The gift of a ring by the defendant to the plaintiff is not necessarily evidence of any promise by the defendant to marry the plaintiff, but is consistent either with a mere intention (apart from a promise) to marry her, or with an intention to make her his mistress.

**SPOONER v. GODFREY, Times, October 16th, [1908—C. A.**

**2. Newspaper Giving Advice—Duty to take Care—Negligence—Damages—Remoteness—Loss due to Third Person's Intervening Crime.**—[The plaintiff bought a copy of a newspaper which was owned and published by the defendants, and in which the City editor gave advice to intending investors and upon application recommended stockbrokers to them. The plaintiff wrote to the newspaper asking for a safe investment for £800, and also for the name of a stockbroker, and the City editor handed the plaintiff's letter to an "outside" broker, asking him to answer it and authorising him to introduce himself to the plaintiff. The broker thereupon wrote to the plaintiff and recommended him to purchase certain stocks (as to the soundness of which no question was raised), and the plaintiff sent him £1,400 to invest accordingly. The broker, who, unknown to the defendants or their City editor, was an undischarged bankrupt, applied it to his own use and did not invest it. The defendants could have easily ascertained his financial position. In an action to recover from the defendants the amount sent to the broker :—

**HELD**—that the defendants had been guilty of a breach of contract in not taking reasonable care to recommend an honest broker; and that, even if the broker committed a criminal offence by converting the money to his own use, the plaintiff's loss was a natural result of the defendants' breach of contract, and that he could recover.

**HELD**—further (Bigham, J., doubting), that his damages were not limited to £800.

Decision of Lord Alverstone, C. J. ([1907] 1 K. B. 483; 76 L. J. K. B. 309; 96 L. T. 425; 23 T. L. R. 264) affirmed.

**DE LA BERE v. PEARSON, LD., [1908] 1 K. B. [280; 77 L. J. K. B. 380; 98 L. T. 71; 24 T. L. R. 120—C. A.**

**2a. Non-Delivery or Wrong Delivery—Supply of Cordite to War Office—Specification—Petition of Right—Amendment.**—[On a petition of right

**Breach—Continued.**

against the Crown for the price of certain deliveries of cordite to the War Office the claim was admitted, but a defence was raised that the Crown was entitled to set off damages incurred in consequence of a breach of contract in respect of other deliveries not in accordance with the specification. By clause 2 of the contract the cordite, if found not of the specified quality, might be rejected, and, if rejected, was not to be considered as delivered under the contract, but the contractor was required to replace the rejected cordite at his own expense. Clause 3 provided that notice of rejection should be sent within forty days after delivery. By clause 6, in case of non-delivery, a fine was to be imposed and power was given to the War Office to buy cordite against the contractor and to terminate the contract.

**HELD**—that though the War Office were justified in their rejection of the cordite, wrong delivery could not be treated as non-delivery under clause 6 of the contract.

*Quære*, whether an amendment can be allowed on a petition of right.

KYNOCH, LD. *v. R.*, *Times*, December 21st, 1908  
[—Pickford, J.]

**III. CONSIDERATION.**

**3. Promise of Shares in Consideration of Consent to Remain a Managing Director of a Company.**—Where, in consideration of the transfer of shares, and of the promise to transfer further shares, a man has consented to remain a managing director of a company, and he has remained so ever since, thus changing his position in consideration of the promise, there is good consideration to support the promise to transfer the further shares.

WATT *v.* CALLARD, *Times*, November 27th, 1908  
[—Eady, J.]

**IV. CONSTRUCTION.**

**4. "Entire Satisfaction"**—Bona fide Dissatisfaction—No Finding of Jury as to Reasonableness of Dissatisfaction.]—The plaintiffs sued for the balance of money alleged to be due on a contract for the renovation of a theatre. The defendants declined to pay this sum on the ground that it was retention money which, by the terms of the contract, they were not liable to pay until the work had been completed to their entire satisfaction, and that this had not been done. The jury found (*inter alia*) that the defendants were honestly and in good faith dissatisfied with the work, the effect of which was not exactly that aimed at, but differed as to whether the dissatisfaction was reasonable or not.

**HELD**—that a finding as to reasonableness of dissatisfaction was not necessary for the defendants, that the exact effect aimed at had not been produced, and that the defendants were entitled to be fastidious so long as they were honest.

JAMES SHOOLBRED & CO. *v.* WYNDHAM AND ALBERRY, *Times*, December 1st, 1908—  
Darling, J.]

**5. Implied Term—Contract to Carry Mails—Agreement with Government Department for use of Pier—Collateral Agreement to allow Use of Berth—Sanctioning User of Pier by other Steamers—Additional Burden thrown on Mail Contractors.**]—Upon the construction of the contract between the Crown and the suppliants as to the carriage of mails between Holyhead and Kingstown, the Court held that the suppliants were entitled to have the use of the inner berth on the east side of Carlisle pier, at Kingstown, as a berth for their steamers. The contract did not give the suppliants the right to the exclusive use of the pier; but there was an implied obligation on the Crown to allow all such facilities at the pier as were reasonably necessary to enable the suppliants to perform their obligations under the contract; in other words, not to allow the pier to be used so as substantially to prevent or impede the due performance by the suppliants of their obligations under the contract.

Decision of Eve, J. (24 T. L. R. 657) reversed.  
CITY OF DUBLIN STEAM PACKET CO. *v.* THE KING, 24 T. L. R. 798—C. A.

**6. Implied Terms—Maintenance and Repair of Wagons—No Implied Right to Notice of Repairs needed.**]—The plaintiffs, two colliery companies, entered into a contract with the defendants for the maintenance and repair of the plaintiffs' wagons. The defendants undertook to keep and maintain the wagons in good and proper repair and condition for the conveyance of traffic. An implied term that the defendants would do without delay what was necessary for the proper maintenance and repair of the wagons was admitted. But the defendants sought to have implied a condition that before they could be called upon to carry out repairs, etc., they must have notice of what repairs, etc., were requisite, and notice of the place where and time when the wagons would be available for repairing. The defendants had a repairing shop on the plaintiffs' premises, for which they paid rent to the plaintiffs.

**HELD**—that it was not preposterous that the defendants in order to carry out their work should have to arrange for the inspection of the wagons when they returned to the colliery, and that therefore an obligation on the plaintiffs to give notice of repairs required could not be read into the agreement as an implied condition.

CROMPTON AND SHAWCROSS, LD. AND HINDLEY  
[FIELD COAL CO. *v.* NORTH CENTRAL WAGON Co., *Times*, May 25th, 1908—Walton, J.]

**7. Indemnity Clause—Construction of Reservoir—Water Company and Contractor—"Damage to Property of any description whatever, . . . caused by . . . execution of the Works"—Expenses incurred by District Council in Repairing Highway by reason of Damage caused by Extraordinary Traffic recovered from Water Company—"Execution of Works"—Haulage to Site of Reservoir.**]—In a contract for the construction of a reservoir, which included the supply of all materials, labour and scaffolding, made between a water company and a contractor,



**Construction—Continued.**

there was an indemnity clause, making the contractor responsible for "injury or damage to person and property of any description whatever which may be caused by or result from the execution of the works."

HELD—that the company could recover from the contractor, under this clause, extraordinary traffic expenses which a rural district council had recovered from the company in respect of the contractor's wagons, as this was damage to property, and also damage caused by or resulting from the execution of the works within the meaning of the indemnity clause.

Decision of the Divisional Court (71 J. P. 513; 6 L. G. R. 359) affirmed.

CROYDON RURAL DISTRICT COUNCIL *v.* SUTTON  
[DISTRICT WATER CO., EWART THIRD PARTY,  
72 J. P. 217; 6 L. G. R. 574—C. A.]

**8. Monthly Deliveries of Coal—Exceptions—Accidents—Substantial Interference—Option to Cancel Delivery.**—A contract to deliver coal to the plaintiffs over a series of months contained certain exception clauses whereby, *inter alia*, accidents or other hindrances intervening or interfering with the production or delivery of coal gave the defendants an option to suspend or to cancel, partly or entirely, any deliveries under the contract. On May 13th an accident occurred which stopped the production until the end of July. On July 31st the defendants cancelled the deliveries for August and September. The accident did interfere with the production during August. The production in September was only slightly below the average and in the evidence did not appear conclusively to have been affected by the accident in May.

HELD—that interference meant substantial interference; that there was substantial interference in August; that the defendants were not bound to give proportionate delivery in August, and were at liberty to cancel delivery for that month; but that there was no substantial interference during September, and that therefore the defendants were liable for non-delivery during that month.

BELGUARD *v.* GREEN, HOLLAND & CO., *Times*,  
[November 26th, 1908—Bray J.]

**8a. Music Hall Artist—Engagement for Different Weeks at Considerable Intervals—Restraint on Performance Elsewhere for Fixed Period before Completion of Engagement.**—By a clause in an agreement, a music hall artist was restrained from performing at music halls in a certain area within eight months prior to the completion of his engagement. The engagement was for different weeks extending over a considerable period, and at considerable intervals.

HELD—that the eight months restriction applied to each of the weeks of the engagement.

LONDON MUSIC HALL, LD. *v.* AUSTIN, *Times*,  
[December 16th, 1908—Eve, J.]

**9. Newspaper Owner and Writer—Contributor or Editor—Right to Notice—Dismissal.**—G. L.

was engaged by the proprietor to contribute articles to and perform certain editorial and managerial services in connection with a supplement of his paper. At a subsequent interview the remuneration for the whole of the services was agreed to be a fixed price per column of contributions.

HELD—that the agreement contained an implied term that notice to determine it should be given.

LANDA *v.* GREENBURG, 52 Sol. Jo. 354—Eve, J.

**10. Personal Contract—Commission Payable "as long as we do Business" with Persons Introduced—Death of Introducer.**—The defendants agreed to pay to H. 5 per cent. commission on all accounts with persons introduced by him "so long as we do business with them."

HELD—that H.'s death did not terminate the liability, which continued in favour of his executors so long as the defendants did business with the persons whom he had introduced.

WILSON *v.* HARPER, [1908] 2 Ch. 370; 77 L. J.  
[Ch. 607; 99 L. T. 391—Neville, J.]

**11. Schoolmaster—Endowed School—Scheme—Dismissal of Assistant Master by Head Master Without Notice—Right of Action against Governors—Endowed Schools Acts, 1868 (31 & 32 Vict. c. 32) and 1869 (32 & 33 Vict. c. 56), ss. 9, 10, 22.**—The plaintiff was an assistant master in a school which came within the provisions of the Endowed Schools Acts, 1868 and 1869, and was regulated by a scheme made by the Charity Commissioners under the latter Act. Rule 30 of the scheme empowered the governors to dismiss at pleasure the head master without assigning cause after giving six calendar months' written notice. Rule 37 defined the powers of the governors as to fixing the number of assistant masters to be employed, and fixing each year the amount to be paid out of the income of the foundation for the purpose of maintaining assistant masters and school plant. Rule 40 provided that "The head master shall have the sole power of appointing and may at pleasure dismiss all assistant masters in the school, and shall determine, subject to the approval of the governors, in what proportions the sum fixed by the governors for the maintenance of assistant masters and school plant and apparatus shall be divided among the various persons and objects for which it is fixed in the aggregate. The governors shall pay the same accordingly, either through the hands of the head master or directly, as they think best." The plaintiff, having been dismissed by the head master without notice, sued the defendants as the governors of the school for wrongful dismissal.

HELD—(1) that, notwithstanding proof of a custom to give a term's notice, the plaintiff was under the scheme entitled to no notice; and (2) that in any case the governors were not responsible for his dismissal by the head master, whether such dismissal was wrongful or not.

Decision of Lawrance, J. (23 T. L. R. 709) affirmed.

WRIGHT *v.* MARQUIS OF ZETLAND, [1908] 1 K. B.  
[63; 77 L. J. K. B. 152; 97 L. T. 867; 24  
T. L. R. 48—C. A.]

**Construction—Continued.**

**12. Steamship Lines to South Africa—"Trade"—Conveyance of Military Officers and Men—Breach—Condition Precedent—Repudiation or Damages.**—In consideration of an annual payment by R. P. H. & Co., H. B. & Co. and A. H. & Co. agreed that so long as they were leading brokers for the B. steamship lines they and the parties they represented would not directly or indirectly engage in the trade between the United Kingdom and the Continent and South or East Africa. Any dispute or difference arising was to be referred to arbitration. During the currency of the agreement the Admiralty accepted a tender from H. B. & Co. of a steamship to convey officers, men, and horses from Southampton to Durban. The steamship which fulfilled this contract also carried a part cargo of rails to New Zealand *via* Durban. R. P. H. & Co. refused to make any further payment to H. B. & Co. and A. H. & Co. on the ground that H. B. & Co. had broken the terms of the agreement. The matter was referred to arbitration. The arbitrator found as facts that H. B. & Co. in making the tender did not intend to repudiate the agreement and honestly thought that the conveyance of military officers, men, and horses was outside "the trade" within the meaning of the agreement, but that they had committed a breach of the agreement. He held, as a matter of law, that the breach was not a breach of a condition precedent or a breach going to the root of the whole contract, so as to release R. P. H. & Co. from all further payments, and that the right and remedy of R. P. H. & Co. sounded in damages only. There was no evidence of any actual damage by reason of the breach.

**HELD**—that the decision of the arbitrator was right and rested on the right grounds.

**HOULDER BROS. & CO. AND ALEXANDER [HOWDEN & CO. v. R. P. H. & CO.,** *Times*, October 24th, 1908—Jelf, J.

**V. FORMATION.**

**13. Schoolmaster—Non-provided School—Managers—Appointment of Head Teacher—Resolution by Managers Appointing to Post—Resolution not Communicated to Candidate by Managers—Whether Contract Complete.**—P. was a candidate for the post of head master at a non-provided school. On March 26th, at a meeting convened to select a candidate for the post, of the six managers present, three voted in favour of P., and two against him; the chairman did not vote, and he declared that the motion had been carried. One of the managers was then instructed to communicate with another candidate and to tell him that his application was unsuccessful, but no person was expressly authorised to communicate with P. On the evening of the same day some difficulty arose as to the appointment of P., and on the following morning P. saw the chairman of the managers, who told him there was a difficulty. On April 1st the manager who had communicated with the unsuccessful candidate informed P. that he had been selected at the meeting on March 26th. An April 2nd the managers rescinded the resolution of March 26th. The

plaintiff brought an action in the county court for damages for loss of salary, and the county court judge held that there was no completed contract between the plaintiff and the defendants, as the defendants had not communicated their resolution of March 26th to the plaintiff.

**HELD**—that the decision of the county court judge was right.

**POWELL v. LEE AND OTHERS,** 72 J. P. 353; 99 [L. T. 284; 24 T. L. R. 606; 6 L. G. R. 840—Div. Ct.

**VI. ILLEGALITY.**

*See also* EXECUTORS, No. 6.

**14. Indemnity—Joint Tortfeasors—Indemnity to Printers against Libel Actions.**—The plaintiffs published a newspaper for defendants, who agreed to indemnify them against claims in respect of any libellous matter.

An action for libel was brought against both plaintiffs and defendants.

**HELD**—that the plaintiffs (who paid money to compromise the libel action) could not recover on the indemnity against the defendants, an agreement by one of two joint tortfeasors to indemnify the other in respect of a wrongful act committed by both not being enforceable.

**SMITH (W. H.) & SON v. CLINTON,** 25 T. L. R. [34—Coleridge, J.

**15. Music Hall—Sketch—Stage Play—Illegal Contract—Action for Breach.**—A contract for the performance at music halls of a sketch which is in fact a stage play, and cannot by virtue of the Theatres Act, 1843, be legally performed at a music hall, is an illegal contract. Where both parties on entering into the contract were aware of the illegality of the performance, no action lies for a refusal to allow the performance at one of the music halls.

**SCOTT v. MACNAGHTEN,** *Times*, November 25th, [1908—Div. Ct.

**16. Promise of Marriage—Promise to Marry on Death of Wife—Legality—Public Policy—Knowledge of Promise.**—A promise by a married man to a woman, who knows that he is married, to marry her on his wife's death is against public policy and affords no cause of action if not fulfilled.

**SPIERS v. HUNT** ([1908] 1 K. B. 720; 77 L. J. [K. B. 321; 98 L. T. 27; 24 T. L. R. 183)—Phillimore, J.

**WILSON v. CARNLEY,** [1908] 1 K. B. 729; 77 [L. J. K. B. 594; 98 L. T. 265; 24 T. L. R. 277; 52 Sol. Jo. 239—C. A. (reversing 23 T. L. R. 757).

**VII. IMPOSSIBILITY OF PERFORMANCE.**

*See* PRIVATE BILLS, No. 3.

**VIII. RECTIFICATION.**

**17. Companies—Rectification of a Working Agreement—Common Mistake of Directors—Parol Evidence of Intention.**—The Court of Appeal held that the M. Co., on the true construction of



**Rectification—Continued.**

a certain agreement, were not entitled to deduct or retain certain expenses of maintenance out of the gross receipts. The M. Co. now brought this action claiming rectification of the agreement by including the expenses in question in conformity with the true intention of the parties.

**HELD**—that as rectification was claimed, parol evidence of intention was admissible, that the companies who were the parties to the agreement had independently of their directors no contractual intention at all, that there had been a mistake common to the respective directors, and that the plaintiffs were entitled to rectification.

MASHONALAND RY. CO., LD. *v.* BEIRA RY. CO.,  
[LD., 125 L. T. Jo. 283—Neville, J.]

**IX. STATUTE OF FRAUDS.**

**18. Agreement not to be Performed within One Year—Time of Performance Deduced from Subject-matter of Contract**—29 Car. 2, c. 3, s. 4.]—By an oral agreement between the plaintiff and the defendants, who carried on business abroad, it was agreed that the defendants should be the sole agents in the United Kingdom for the sale of the plaintiff's patented goods until the patent rights were sold to a company, and the plaintiff agreed to supply the defendants as such agents with such patented goods as they should order. At the time of the agreement the patent had eleven years to run.

**HELD**—that there was not on the face of the agreement a fixed time longer than a year for its performance; that the agreement might be performed within a year as the patent might be sold to a company within the year; and that therefore sect. 4 of the Statute of Frauds did not apply.

If there was a fixed time specified on the face of the agreement longer than a year for its performance, sect. 4 of the Statute of Frauds would apply, though there might be a defeasance stipulation in the agreement which might end it within the year.

Decision of Walton, J. (24 T. L. R. 2) reversed.

LAVELETTE *v.* RICHES & Co., 24 T. L. R. 336;  
[52 Sol. Jo. 279—C. A.]

**X. UNDUE INFLUENCE.**

*See also title EQUITY.*

**19. Fraud—Constructive Notice—Bank taking Security from a Woman for a Man's Debt.**]—B., a widow of intemperate habits, lived with K. By fraud and undue pressure K. induced her to give him certain scrip to be deposited at his bank as security for a loan to him. The bank manager knew only that B. was staying in K.'s house, and never saw her or made inquiries. He employed K. to obtain her signature to blank transfers of the scrip and promissory notes, all signed by her as collateral security.

On B. becoming insane, her committee sought to invalidate the transactions.

**HELD**—that he must succeed, because (1) the

bank were by the circumstances put upon their inquiry, and (2) the bank made K. their agent to obtain B.'s signature, and were therefore affected by his knowledge.

BUNBURY *v.* HIBERNIAN BANK, [1908] 1 I. R.  
[261—Ross, J.]

**20. Husband and Wife—Guarantee by Wife—Guaranteeing Husband's Trade Debt—Document not explained to her—Husband procuring Execution—Creditor suing on Guarantee.**]—Merchants agreed to supply trade goods to B. on credit, if his wife would guarantee payment, and they sent to B. a form of guarantee, leaving it entirely to him to obtain his wife's signature. He obtained her signature without sufficiently explaining to her the nature of the document, which she did not, in fact, understand.

**HELD**—that an action on the guarantee could not be maintained.

*Bischoff's Trustees v. Frank* ((1903) 89 L. T. 188—Wright, J.) and *Turnbull & Co. v. Duval* ([1902] A. C. 429; 71 L. J. P. C. 84; 87 L. T. 154; 18 T. L. R. 521—P. C.) followed.

CHAPLIN & Co., LD. *v.* BRAMMALL, [1908]  
[1 K. B. 233; 77 L. J. K. B. 366; 97 L. T. 860—C. A.]

**CONTRACTOR.**

*See BUILDERS, ETC.*

**CONVERSION.**

*See TROVER AND CONVERSION.*

**CONVERSION AND RECONVERSION IN EQUITY.**

*See INFANTS, No. 3; PARTITION, No. 1; TRUSTS AND TRUSTEES; WILLS.*

**CONVEYANCES.**

*See DEEDS AND OTHER INSTRUMENTS; EQUITY; FRAUDULENT AND VOLUNTARY CONVEYANCES; REAL PROPERTY AND CHATTELS REAL; SALE OF LAND.*

**CONVICTIONS.**

*See CRIMINAL LAW AND PROCEDURE.*

**CONVICT'S PROPERTY.**

*See CRIMINAL LAW.*



**COPYHOLDS.**

I. COURT ROLLS . . . . .	COL. 115
[No paragraphs in this vol. of the Digest.]	
II. GENERALLY . . . . .	115
III. MANORIAL CUSTOMS AND TENURES	115
IV. RIGHTS OF THE LORD OF THE MANOR . . . . .	115
[No paragraphs in this vol. of the Digest.]	
<i>And see</i> COMPULSORY PURCHASE.	

**I. COURT ROLLS.**

[No paragraphs in this vol. of the Digest.]

**II. GENERALLY.**

1. *Devolution—Intestacy—Custom of Manor—Implied or Resulting Trust—Descent as in Gavelkind Tenure—Customary or Common Law Heir.*—The purchaser of certain copyhold hereditaments, who was admitted tenant thereof, conveyed and surrendered them to a person who admittedly held them on an implied trust for the transferor. The latter died intestate as to the copyholds. By the custom of the manor, not limited to tenants on the roll or tenants dying seised, lands held of the manor descended on the death of a tenant intestate as in the case of gavelkind tenure.

HELD—that as the equitable interest arose under an implied or resulting trust, which was not executory, the custom of descent applied, and the intestate's two sons succeeded as customary heirs, and not the elder as heir-at-law.

*Trask v. Wood* ((1839) 4 My. and Cr. 324) applied.

IN RE HUDSON, CASSELS *v.* HUDSON, [1908]  
[1 Ch. 655; 77 L. J. Ch. 305; 98 L. T. 567;  
24 T. L. R. 333—Eve, J.]

**III. MANORIAL CUSTOMS AND TENURES.**

2. *Heriot—Customary Freehold—“Dying seised”—Mortgagor in Possession.*—The owner of customary freeholds mortgaged them by a statutory mortgage, but was still in possession at his death.

HELD—that he had not died “seised” of them for the purpose of a manorial custom whereby a heriot was due to the lord on the death of an owner “dying seised.”

Decision of Kekewich, J. ([1907] 1 Ch. 366; 77 L. J. Ch. 232; 96 L. T. 322; 23 T. L. R. 310) reversed.

COPESTAKE *v.* HOPER, [1908] 2 Ch. 10; 77  
[L. J. Ch. 610; 99 L. T. 371; 24 T. L. R. 628;  
52 Sol. Jo. 516—C. A.]

**IV. RIGHTS OF LORD OF THE MANOR.**

[No paragraphs in this vol. of the Digest.]

**COPYRIGHT AND LITERARY PROPERTY.**

I. ASSIGNMENT . . . . .	COL. 116
II. BOOKS . . . . .	117
[No paragraphs in this vol. of the Digest.]	
III. CATALOGUES . . . . .	117
[No paragraphs in this vol. of the Digest.]	
IV. DESIGNS . . . . .	117
V. DRAMATIC PIECES . . . . .	117
VI. ENCYCLOPÆDIA . . . . .	118
[No paragraphs in this vol. of the Digest.]	
VII. LETTERS . . . . .	118
[No paragraphs in this vol. of the Digest.]	
VIII. MUSIC . . . . .	118
IX. PHOTOGRAPHS . . . . .	119
[No paragraphs in this vol. of the Digest.]	
X. PICTURES . . . . .	119
XI. REPORTS IN NEWSPAPERS . . . . .	119
[No paragraphs in this vol. of the Digest.]	
XII. SCULPTURE . . . . .	119
[No paragraphs in this vol. of the Digest.]	
XIII. VARIOUS . . . . .	119

*See also* CRIMINAL LAW, No. 46; DEPENDENCIES AND COLONIES.

**I. ASSIGNMENT.**

1. *Designs for Christmas Cards—Registration of Copyright—Assignment to Company—Assignment before Incorporation—Goods ordered before that date and imported afterwards—Infringement—Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), ss. 1, 4, 11.*—The original inventor and designer of drawings, which he used for decorating Christmas cards, converted his business into a limited company. The drawings were either pictorial, or pictorial with words added, or words alone in a distinctive form. Dies of the drawings were engraved, from which were struck reproductions, principally in gold leaf, which were then gummed on to the cards. Two days before the company were registered the copyright in all the designs, drawings, and photographs was assigned to the company. The company after its incorporation adopted the assignment, and registered the copyright in all the drawings under the Fine Arts Copyright Act, 1862. In an action by the company for infringement of the copyright:—

HELD—(1) that the drawings, designs, etc., registered were “drawings” within the meaning of the Act;

(2) That the assignment to the company was properly registered as of its true date, though the company was incorporated two days later, and that the company was properly registered in its corporate name as assignees; and

(3) That the importation after registration of cards ordered before registration was an infringement of the company's copyright.

MILLER AND LANG, LD. *v.* POLAK, [1908] 1  
[Ch. 433; 77 L. J. Ch. 241; 98 L. T. 378;  
24 T. L. R. 228—Neville, J.]

## II. BOOKS.

[No paragraphs in this vol. of the Digest.]

## III. CATALOGUES.

[No paragraphs in this vol. of the Digest.]

## IV. DESIGNS.

See No. 1, *supra*.

## V. DRAMATIC PIECES.

2. *Imitation in "Make-up" and Scenic Effects*—"Author"—*Dramatic Copyright Act*, 1833 (3 and 4 Will. IV., c. 15), ss. 1, 2—*Copyright Act*, 1842 (5 and 6 Vict. c. 45), s. 2.—A "dramatic piece" within the meaning of sect. 1 of the *Dramatic Copyright Act*, 1833, means a composition which is capable of being printed and published. It cannot consist of scenic effects and dramatic situations without words.

The protection, therefore, afforded to the author of a dramatic piece by the *Dramatic Copyright Act*, 1833, and the *Copyright Act*, 1842, does not extend to a composition entirely different in its words merely because when acted there is a similarity in its scenic effects, "make-up," and other accessories; but where there is a similarity in the words the accessories, situations, etc., may be looked at to see whether, when taken with the words, one piece has been copied from the other.

*Semble*, the person who suggests to another the ideas and dramatic situations of a play, and pays the latter to write it for him, is not the "author" of the play within the meaning of the Act.

Decision of Phillimore, J. (23 T. L. R. 715) reversed.

TATE v. FULLBROOK, [1908] 1 K. B. 821; 77 [L. J. K. B. 577; 98 L. T. 706; 24 T. L. R. 347; 52 Sol. Jo. 279—C. A.]

3. *Pantomime Sketch—Infringement—Cinematograph—Sale of Films*—"Cause to be represented"—*Dramatic Copyright Act*, 1833 (3 & 4 Will. IV., c. 15), s. 1.—A pantomime sketch, which is performed chiefly in dumb show, but with a certain amount of "gag," of which there is no book of the words or stage directions, and which is not capable of being printed and published as a literary piece, is not a "dramatic piece" within the protection of the *Dramatic Copyright Act*, 1833.

*Semble*, if such a sketch was a dramatic piece a cinematograph reproduction of it would be a "representation" of it within the meaning of the Act.

*Semble* also, in such a case, the manufacturer of a cinematographic film photographed from living persons, which when thrown upon a sheet was a reproduction of a dramatic piece, by merely selling the films to purchasers would not "represent or cause to be represented" the dramatic piece within the meaning of the Act, though he knew that they were bought for the purpose of being exhibited at places of dramatic entertainment.

KARNO v. PATHÉ FRÈRES, LD., 99 L. T. [114; 24 T. L. R. 588; 52 Sol. Jo. 499—Jelf, J.]

## VI. ENCYCLOPÆDIA.

[No paragraphs in this vol. of the Digest.]

## VII. LETTERS.

[No paragraphs in this vol. of the Digest.]

## VIII. MUSIC.

4. *International Copyright—Musical Composition—Registration—International Copyright Act*, 1843 (7 & 8 Vict. c. 12)—*International Copyright Act*, 1886, ss. 6, 11.—The plaintiffs claimed to be registered owners of the sole liberty of representing a musical composition. They alleged that one of the defendants, who alone appeared, had entered into a contract with the other defendants for the production at a theatre of that composition, or one substantially identical with it, and had in fact produced it without the plaintiffs' consent. The defendants denied that the plaintiffs were the registered owners of the sole right of representation. The piece was first performed in Paris on April 19th, 1877. The music and libretto were published in book form in Paris on May 10th, 1877. On June 12th, 1877, the publication was registered at Stationers' Hall, but no registration was then made of the first representation, as required by 7 & 8 Vict. c. 12. On October 12th, 1877, the plaintiffs acquired from M. B. the exclusive property in the piece in the United Kingdom, the assignment being registered at Stationers' Hall on October 31st, 1877. On November 21st, 1877, the performing rights were registered by M. B. The defendant also pleaded that the plaintiffs could not rely on the *International Copyright Act*, 1886, because that Act conferred rights only on the owners of the French performing rights and because the defendant was protected by the proviso to sect. 6 as having acquired a valuable interest by the production of an English adaptation, of which the performance now complained of was an abridgement.

HELD—that there had been no registration of the performing rights in England on which the plaintiffs could rely; but that they claimed through the author within the meaning of sects. 6 and 11 of the *International Copyright Act*, 1886, and that on the facts the defendant had no such valuable interest as to bring him within the protection given by the proviso to sect. 6.

JOSEPH WILLIAMS, LD. v. MOORE AND [ANOTHER, *Times*, February 26th, 1908—Phillimore, J.]

5. *International Copyright—Musical Composition—Right of Public Performance—Printing Notice on Title-page—Notice in Foreign Language—Unauthorised Performance—Injunction against Occupiers of Place of Entertainment—Copyright (Musical Compositions) Act*, 1882 (45 & 46 Vict. c. 40), s. 1—*Berne Convention*, Arts. 2, 9—*International Copyright Act*, 1886 (49 & 50 Vict. c. 33).—The foreign author of a musical composition who has complied with all the requirements of the foreign country of origin of the work for obtaining copyright therein, and who has complied with the requirements of the *Berne Convention* (the foreign country being a

**Music—Continued.**

party to the Convention), is entitled in this country to the protection given by the English Copyright Acts without complying with their formalities. It is sufficient for the purpose of reserving the right of public performance in this country to state on the title-page or commencement of the work, in the language of the foreign country, that the right of public performance is forbidden, and it is not necessary to print such a notice in English under sect. 1 of the Copyright (Musical Compositions) Act, 1882.

Sect. 3 of the Copyright (Musical Compositions) Act, 1888, relieves from liability to penalty or damages the owner or occupier of a place of entertainment who does not "wilfully cause or permit" an unauthorised performance, complained of by the copyright owner, "knowing it to be unauthorised." An injunction will not be granted against him unless he threatens and intends to repeat the performance.

Decision of Neville, J. ([1908] 1 Ch. 443; 77 L. J. Ch. 256; 24 T. L. R. 231) reversed as to one point.

SARPY *v.* HOLLAND, [1908] 2 Ch. 198; 77 [L. J. Ch. 637; 99 L. T. 317; 24 T. L. R. 600—C. A.]

**IX. PHOTOGRAPHS.**

[No paragraphs in this vol. of the Digest.]

**X. PICTURES.**

6. *Multiplying Copies—Cutting Woodcuts out of Book—Fine Arts Copyright Act, 1862* (25 & 26 Vict. c. 68), s. 11.—The plaintiffs were the registered proprietors under the Fine Arts Copyright Act, 1862, of the copyright in a painting, and they published an engraving of it. They gave a licence to a publisher to use the picture once only as a small wood block in a pamphlet illustrative of certain pictures, provided that an acknowledgment of the permission was printed at the foot of the reproduction. The defendants purchased a number of the pamphlets and cut out the woodcut in question, and mounted it on cards, which they sold.

HELD—that as there was no multiplication of copies, this was not an infringement of the plaintiffs' copyright.

FROST AND REED *v.* OLIVE SERIES PUBLISHING [Co., 24 T. L. R. 649—Eady, J.]

**XI. REPORTS IN NEWSPAPERS.**

[No paragraphs in this vol. of the Digest.]

**XII. SCULPTURE.**

[No paragraphs in this vol. of the Digest.]

**XIII. VARIOUS.**

7. *Name—Nom de plume—Newspaper Proprietor and Contributor—Author—Right of Contributor to the Pseudonym invented by him for the Purpose of his Contributions.*—G. L. invented a *nom de plume* by which her contributions to a newspaper were signed and known. The name was also used by her on cards or certificates of membership of a league

instituted by her for the purposes of the same paper.

HELD—that as against the proprietor of the paper G. L. was entitled to the exclusive right to print, publish, and use her *nom de plume* after her connection with the publication had ceased.

LANDA *v.* GREENBURG, 24 T. L. R. 441; 52 Sol. [Jo. 354—Eve, J.]

8. *Unpublished Picture—Author's Common Law Property in—Unauthorised Publication—Innocent Publishers—Damages.*—The right of an author of an unpublished literary production or work of art is not confined to the paper or canvas or other material upon which the work is written or placed. His right is an exclusive right to publish or refrain from publishing it, as he thinks fit, and any one who, however innocently, infringes his legal right is liable in damages as well as to an injunction.

Millar *v.* Taylor (1769), 4 Burr. 2309, 2396), Donaldsons *v.* Beckett (1774), 4 Burr. 2408), Prince Albert *v.* Strange ((1849), 2 De G. & Sm. 652, 695), and Mayall *v.* Higbey ((1862), 1 H. & C. 148) applied.

MANSELL *v.* THE VALLEY PRINTING CO. AND [RANKINE, [1908] 1 Ch. 567; 77 L. J. Ch. 397; 98 L. T. 432; 24 T. L. R. 311—Eady, J.]

Affirmed, [1908] 2 Ch. 441; 77 L. J. Ch. 742; 99 L. T. 464; 24 T. L. R. 802; 52 Sol. Jo. 660—C. A.]

**CORONERS.**

[No paragraphs in this vol. of the Digest.]

**CORPORATIONS.**

And see LOCAL GOVERNMENT; PUBLIC AUTHORITIES.

1. *Dissolution—Bona vacantia—Surety for Payment of Rent—Tenant a Limited Company—Dissolution of Company—Liability of Surety—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 143.—The plaintiffs granted a lease of land for a certain term to a company incorporated under the Companies Acts, the defendants being sureties for the payment of the rent, which was payable monthly. During the term the company was wound up and finally dissolved under sect. 143 of the Companies Act, 1862, and the rent was paid down to the date of the dissolution. The plaintiffs sued the defendants as sureties for subsequent rent.

HELD—that the lease, not having been assigned, came to an end when the company was dissolved, and that the sureties were no longer liable.

HASTINGS CORPORATION *v.* LETTON & SONS, [1908] 1 K. B. 378; 77 L. J. K. B. 149; 97 L. T. 582; 20 T. L. R. 456; 15 Manson, 58—Div. Ct.]

2. *Inspection of Books by Member—General Right of Inspection.*—An inspection of the



**Corporations—Continued.**

books of a corporation, which is not governed by the Companies Acts, will only be allowed on the application of a member, where it is shown that such inspection is requisite with reference to some specific dispute or question depending in which the member has a special interest different from that of the other members, that is, where the member has a definite purpose or object of his own; and the inspection will only be granted to such an extent as may be necessary for the particular occasion.

*R. v. Merchant Tailors Co.*, ((1881) 2 B. & Ad. 115) followed.

THE BANK OF BOMBAY *v.* SULIMAN SOMJI, 99 [L. T. 62; 24 T. L. R. 698—P. C.

**CORRUPT PRACTICES.**

*See* ELECTIONS.

**COSTS.**

*See* ARBITRATION; BANKRUPTCY AND INSOLVENCY; BILLS OF EXCHANGE; CONTEMPT AND ATTACHMENT; COUNTY COURTS; CRIMINAL LAW AND PROCEDURE; EXECUTION; PRACTICE AND PROCEDURE; SOLICITORS, ETC.

**COUNTERCLAIM.**

*See* SET-OFF AND COUNTERCLAIM.

**COUNTY COURTS.**

	COL.
I. COURTS, JUDGES, AND OFFICERS . . . . .	121
[No paragraphs in this vol. of the Digest.]	
II. JURISDICTION AND LAW.	
(a) General . . . . .	122
(b) Remitted Actions . . . . .	122
III. PROCEDURE.	
(a) General . . . . .	122
(b) Statutory Defences . . . . .	123
[No paragraphs in this vol. of the Digest.]	
IV. COSTS. . . . .	123
V. EXECUTION . . . . .	124
VI. ATTACHMENT OF DEBTS . . . . .	124
VII. JUDGMENT SUMMONS . . . . .	125
[No paragraphs in this vol. of the Digest.]	
VIII. APPEALS . . . . .	125

*See also* ADMIRALTY, No. 6; BANKRUPTCY; EVIDENCE; INTERPLEADER.

**I. COURTS, JUDGES, AND OFFICERS.**

[No paragraphs in this vol. of the Digest.]

**II. JURISDICTION AND LAW.**

**(a) General.**

1. *Submission to Arbitration—Staying Proceedings—County Court—Jurisdiction of County Court—Arbitration Act, 1889* (52 & 53 Vict. c. 49), ss. 4, 27.—A county court judge has jurisdiction, under sect. 4 of the Arbitration Act, 1889, to stay proceedings in an action where there is submission to arbitration.

*Dicta in Runciman & Co. v. v. Smyth & Co.* ((1904) 20 T. L. R. 625) not followed.

MORRISTON TINPLATE CO. *v.* BROOKER, DORE [ & Co., [1908] 1 K. B. 403; 77 L. J. K. B. 197; 98 L. T. 219; 24 T. L. R. 224; 52 Sol. Jo. 210—Div. Ct.

*See also* ARBITRATION, No. 4.

**(b) Remitted Actions.**

2. “*Action of Tort*”—*Alleged Negligence of Dentist—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 66.—A statement of claim alleged that the plaintiff went to the defendant, who was employed by the plaintiff for reward, to have a tooth extracted by his painless process, and the defendant or his operator or other representative agent extracted the tooth so unskilfully that broken portions of the tooth were left in the jaw, whereby illness, pain, and suffering were caused to the plaintiff.

HELD—that this was an action of tort within the meaning of s. 66 of the County Courts Act, 1888, and could be remitted under that section to the county court.

EDWARDS *v.* MALLAN, [1908] 1 K. B. 1002; 77 [L. J. K. B. 698; 98 L. T. 824; 24 T. L. R. 376; 52 Sol. Jo. 314—C. A.

**III. PROCEDURE.**

**(a) General.**

3. *Bias of Jury—Suggestion of Probable Bias on Part of Jury—Course to Pursue.*—When a party to an action in the county court, which is eminently a county court case, desires to remove the action from that county court on the ground that the jury are likely to be biassed, the proper course is not to apply for *certiorari*, but to ask the county court judge to transfer the action to another county court.

CLARE RURAL DISTRICT COUNCIL *v.* COLLEN, [72 J. P. 115—Div. Ct.

4. *Remitted Action—Action to Recover Damages for Personal Injuries—Adding Claim under Employers' Liability Act, 1880—County Court Rules, 1903, Ord. 14, r. 12—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 66.—An action brought in the High Court to recover damages for personal injuries owing to the alleged negligence of the defendants, in whose employment the plaintiff was, was remitted to the county court under sect. 66 of the County Courts Act, 1888. In the county court the plaintiff delivered particulars of his claim, inserting, in addition to the common law claim,

**Procedure—Continued.**

an alternative claim for damages under the Employers' Liability Act, 1880.

HELD—that the plaintiff was entitled to do so.

WOOD *v.* WEBER, 99 L. T. 195; 24 T. L. R. 587; [52 Sol. Jo. 482; [1908] W. N. 121—Div. Ct.]

**(b) Statutory Defences.**

[No paragraphs in this vol. of the Digest.]

**IV. COSTS.**

5. *Action for Damages, claiming Perpetual Injunction with Alternative Claim for Damages—Failure of Claim for Damages and Injunction—£3 recovered on Alternative Claim—Scale of Costs—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 119—County Court Rules, 1903 and 1904, Ord. 53, rr. 1, 11.*—The plaintiff brought an action in the county court against his landlord for trespass, or disturbance of his tenancy, claiming an injunction. In the alternative he claimed for compensation in respect of improvements under his agreement for a lease. Judgment with costs was given for the plaintiff on the second claim for £3, the judge holding that the tenancy had determined. Subsequently the county court judge, on a review of taxation, ordered the costs to be taxed under column B of the county court scales of costs, holding that he was bound to do so by Ord. 53, r. 11.

HELD—that as the claim for compensation was a distinct claim, Ord. 53, r. 1, governed the matter, and the costs must be taxed under the scale applicable to the sum recovered.

CLINTON *v.* BENNETT, [1908] 1 K. B. 109; 77 [L. J. K. B. 52; 97 L. T. 789—Div. Ct.]

6. *Action Discontinued—No Power to Certify for Costs on "Higher Scale"—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 118, 119—County Court Rules, 1903–06, IX. 1; LXIII. 7.*—Where the plaintiff in a county court action gives notice of discontinuance under Ord. 9, r. 1, the judge, in awarding costs to the defendant under that rule, has no power to direct them to be taxed on a scale higher than that ordinarily applicable to the sum claimed by the plaintiff.

FAWCETT *v.* HORSFIELD, 53 Sol. Jo. 61— [Bucknill, J.]

7. *Nonsuit—Depriving Defendant of Costs—Grounds for—Appeal—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 88, 93, 113, 120.*—Where a county court judge has, without proper materials before him, deprived a party of costs or has directed the wrong party to pay the costs, an appeal lies to the High Court under sect. 120 of the County Courts Act, 1888.

*Semble*, it is not sufficient ground for depriving a successful defendant of costs that knowing the person really liable to the plaintiff he has not given him information on the point.

A county court judge nonsuited the plaintiff in an action of tort, the plaintiff's evidence having shown that the defendants were not the

persons liable, and he deprived the defendants of their costs on the ground that they had not given every assistance and information to the plaintiff to enable her to determine who was the proper person to be sued.

HELD—that as the evidence showed that the defendants were not the persons liable, judgment ought to have been entered for them, and that, as the nonsuit could not stand, the Court must give the judgment which the county court judge ought to have given, and the Court was entitled to attach to that judgment the proper consequences, namely, that the defendants should have their costs.

WESTGATE *v.* CROWE AND OTHERS, [1908] 1 [K. B. 24; 77 L. J. K. B. 10; 97 L. T. 769; 24 T. L. R. 14—Div. Ct.]

**V. EXECUTION.**

8. *Equitable Execution—Receiver of Equitable Interest in Land—Jurisdiction to Appoint—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 89.*—A county court judge has power to appoint a receiver, by way of equitable execution, of an equitable interest in land.

R. *v.* SELFE (C. C. J.) AND ANOTHER, [1908] 2 [K. B. 121; 77 L. J. K. B. 697; 98 L. T. 930; 24 T. L. R. 560—Div. Ct.]

9. *Time when Warrant binds Goods—Goods within District of another County Court—Delivery of Warrant to that Court—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 158—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 26.*—Judgment having been recovered against the defendant in the D. County Court, a warrant of execution was issued and handed to the high bailiff to be executed. Later on the same day a creditors' deed was executed by the defendant, who was resident within the jurisdiction of the M. County Court. There being no goods of the defendant within the district of the D. County Court, the warrant was, on the same day, sent to the registrar of the M. County Court under sect. 158 of the County Courts Act, 1888, to be executed, and it reached the registrar the next day.

HELD—that under sect. 26 of the Sale of Goods Act, 1893, the warrant did not bind the goods until it was delivered by the registrar of the M. County Court to the high bailiff of that Court; and that, therefore, the trustee under the creditors' deed had priority.

BIRSTALL CANDLE CO. *v.* DANIELS; SAUNDERS [CLAIMANT, [1908] 2 K. B. 254; 77 L. J. K. B. 590; 99 L. T. 109; 24 T. L. R. 572; 52 Sol. Jo. 458—Div. Ct.]

**VI. ATTACHMENT OF DEBTS.**

10. *Friendly Society—Money due to Member—Rules—Notice of Withdrawal—Power to Attach Money.*—In an action in the county court the plaintiff obtained a judgment for £28. This judgment being unsatisfied, he instituted garnishee proceedings against a friendly society, of which the judgment debtor was a member. According to the society's rules members were

**Attachment of Debts—Continued.**

obliged to give written notice of their intention to withdraw sums due to them.

**HELD**—that where notice is required to be given in order to obtain a sum of money by the person to whom it is due, such money is not recoverable by garnishee proceedings in the county court.

COWLEY v. TAYLOR; ACKERS AND OTHERS,  
[GARNISHEES, 124 L. T. Jo. 569—Div. Ct.]

**VII. JUDGMENT SUMMONS.**

[No paragraphs in this vol. of the Digest.]

**VIII. APPEALS.**

See No. 7, *supra*.

**COUNSEL.**

See BARRISTERS.

**COURTS.**

I. HOUSE OF LORDS . . . . .	COL. 125
[No paragraphs in this vol. of the Digest.]	
II. PRIVY COUNCIL . . . . .	125
[No paragraphs in this vol. of the Digest.]	
III. COURTS OF LOCAL JURISDICTION.	
(a) Mayor's Court, London . . . . .	125
(b) Lancaster Palatine Court . . . . .	126
[No paragraphs in this vol. of the Digest.]	
(c) Liverpool Court of Passage . . . . .	126
[No paragraphs in this vol. of the Digest.]	
(d) Preston Court of Pleas . . . . .	126
[No paragraphs in this vol. of the Digest.]	
(e) Salford Hundred Court . . . . .	126
[No paragraphs in this vol. of the Digest.]	
IV. IN GENERAL . . . . .	126
[No paragraphs in this vol. of the Digest.]	

See also COUNTY COURTS; CRIMINAL  
LAW; JUDGES; MAGISTRATES;  
PRACTICE AND PROCEDURE.

**I. HOUSE OF LORDS.**

[No paragraphs in this vol. of the Digest.]

**II. PRIVY COUNCIL.**

[No paragraphs in this vol. of the Digest.]

**III. COURTS OF LOCAL JURISDICTION.****(a) Mayor's Court, London.**

1. *Mayor's Court—Jurisdiction—Promissory Note—Payable in City—Parties not in City—Alternative Modes of Proving Cause of Action—One only showing Jurisdiction.*—A promissory note was made payable in the City of London. No part of the cause of action (apart from necessity for presentment) arose within the City, and neither party resided or carried on business there.

The plaintiff sued on the note in the Mayor's Court, and the defendant moved for a prohibition.

**HELD**—that prohibition should not go, upon condition that the plaintiff undertook to rely on and prove presentment in the City, which would give jurisdiction to the Mayor's Court, and not to rely (as he might ordinarily do) upon waiver of any necessity for presentment.

JOSOLYNE v. ROBERTS, [1908] 2 K. B. 349; 77  
[L. J. K. B. 845; 99 L. T. 283—Div. Ct.]

**(b) Lancaster Palatine Court.**

[No paragraphs in this vol. of the Digest.]

**(c) Liverpool Court of Passage.**

[No paragraphs in this vol. of the Digest.]

**(d) Preston Court of Pleas.**

[No paragraphs in this vol. of the Digest.]

**(e) Salford Hundred Court.**

[No paragraphs in this vol. of the Digest.]

**IV. IN GENERAL.**

[No paragraphs in this vol. of the Digest.]

**COURTS MARTIAL.**

See COURTS; DEPENDENCIES AND COLONIES; ROYAL FORCES.

**COVERTURE.**

See HUSBAND AND WIFE.

**COWSHEDS AND DAIRIES.**

See PUBLIC HEALTH.

**CREMATION.**

See BURIAL AND CREMATION; CRIMINAL  
LAW.

**CRIMINAL LAW AND  
PROCEDURE.****I. GENERALLY.**

COL.

(a) Capacity to Commit Crime . . . . .	127
[No paragraphs in this vol. of the Digest.]	
(b) Evidence . . . . .	128
(c) Indictment Generally . . . . .	130
(d) Jurisdiction . . . . .	131
[No paragraphs in this vol. of the Digest.]	
(e) Poor Prisoners' Defence Act, 1903 . . . . .	131
[No paragraphs in this vol. of the Digest.]	
(f) Practice, Generally . . . . .	131
(g) Prevention of Crimes . . . . .	132
[No paragraphs in this vol. of the Digest.]	



## Criminal Law and Procedure—Continued.

## I. GENERALLY—Continued.

COL.

- (h) Principals and Accessories . . . 132  
 (i) Restitution of Property . . . 133  
 (j) Reward . . . 133

[No paragraphs in this vol. of the Digest.]

## II. SPECIFIC OFFENCES.

- (a) Miscellaneous Offences . . . 133  
 (b) Abortion . . . 135  
 (c) Assault . . . 135  
 (d) Bigamy . . . 135  
 (e) Breach of the Peace . . . 136

[No paragraphs in this vol. of the Digest.]

- (f) Concealment of Birth . . . 136

[No paragraphs in this vol. of the Digest.]

- (g) Conspiracy . . . 136  
 (h) Cruelty to Children . . . 136  
 (i) Disorderly Houses . . . 136  
 (j) Embezzlement . . . 137

[No paragraphs in this vol. of the Digest.]

- (k) Falsification of Accounts . . . 137

[No paragraphs in this vol. of the Digest.]

- (l) Forgery . . . 137

[No paragraphs in this vol. of the Digest.]

- (m) Housebreaking Implements, Possession of . . . 137

[No paragraphs in this vol. of the Digest.]

- (n) Larceny, False Pretences, and Receiving Stolen Goods . . . 137

- (o) Malicious Damage . . . 142  
 (p) Manslaughter . . . 142  
 (q) Murder . . . 143  
 (r) Obscene Books . . . 143  
 (s) Perjury . . . 144  
 (t) Treason . . . 144

[No paragraphs in this vol. of the Digest.]

- (u) Vagrancy . . . 144

[No paragraphs in this vol. of the Digest.]

- (v) Women and Girls, Offences against . . . 144

## III. CONVICT'S PROPERTY . . . 144

[No paragraphs in this vol. of the Digest.]

## IV. CRIMINAL APPEALS.

- (a) Generally . . . 144  
 (b) Appeal against Sentence . . . 145  
 (c) Appeal on Facts . . . 149  
 (d) Bail . . . 150  
 (e) Fresh Evidence . . . 151  
 (f) Insanity . . . 152  
 (g) Mistakes of Judge . . . 153  
 (h) Practice . . . 156  
 (i) Rogues and Vagabonds . . . 156

See also ANIMALS; BANKRUPTCY AND INSOLVENCY; ELECTIONS, NOS. 5, 6; EXTRADITION; HIGHWAYS; INTOXICATING LIQUORS; LIBEL AND SLANDER; MAGISTRATES; PUBLIC HEALTH, ETC.

## I. GENERALLY.

## (a) Capacity to Commit Crime.

[No paragraphs in this vol. of the Digest.]

## (b) Evidence.

1. *Evidence of Accomplice—Corroboration—No Denial when Charged.*—Although there is no rule of law that the evidence of an accomplice must be corroborated, it is the universal practice for the judge to tell the jury that they ought not to act on the uncorroborated evidence of such a person.

Where the only important evidence for the prosecution is the testimony of an accomplice, the fact that the prisoner made no answer when formally charged by a police officer is not under ordinary circumstances corroboration.

R. v. TATE, [1908] 2 K. B. 680; 77 L. J. K. B. [1043; 99 L. T. 620; 72 J. P. 391; 52 Sol. Jo. 699—C. C. A.]

2. *Evidence of Accomplice—Whether sufficient Corroboration.*—A medical man was charged with unlawfully using an instrument upon a pregnant woman. The evidence against him consisted almost entirely of her statement. The corroboration relied upon consisted of a letter written by her to a friend and statements made by her and by the prisoner to that friend.

The judge, upon a consideration of the depositions and counsel's opening statement, advised the jury that it would not be proper to convict.

R. v. M., 72 J. P. 214—Bucknill, J.

3. *Evidence of Prisoner—Cross-examination as to Previous Convictions—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (f) (ii).*—The prisoner was indicted for a rape upon a woman of full age. Sworn as a witness upon his own behalf, he alleged that the acts complained of took place with the consent of the prosecutrix.

HELD—that this was not a defence such as to involve imputation on the character of the prosecutrix within the meaning of the Criminal Evidence Act, 1898, sect. 1 (f) (ii.), so as to entitle the prosecution to cross-examine as to previous convictions.

R. v. FISHER (*Times*, January 31st, 1889) dissented from.

R. v. SHEEHAN, 72 J. P. 232; 24 T. L. R. 459—[Jelf, J.]

4. *Evidence of a Witness Implicating the Prisoner but not Admissible against Him—Influence of such Evidence on Jury—Caution of Judge.*

*Semble*, where on the trial of C., A. is called as a witness for the prosecution and says that he himself is guilty, but C. is innocent of the crime charged, and then his written confession implicating C. is put to him in cross-examination as a hostile witness, the confession does not become evidence admissible against C.

On the trial of B. and C. for burglary on a Monday night, the evidence against C. was that A., B., and C. were seen in each other's company on the Monday afternoon and the following Tuesday afternoon. The burglary was at a post office and a large number of stamps were stolen. On the Tuesday afternoon C. was seen dealing openly with 1s. 3d. worth of stamps, and on the following Sunday with twelve halfpenny stamps. C. was searched on the Tuesday afternoon and

**Generally—Continued.**

no stamps were found on him. When C. was arrested he said that he did not know B. C. admitted when giving evidence that he did know B. A. was called by the prosecution and he swore that though he was guilty C. was innocent. Leave was obtained to treat him as a hostile witness, and a written confession made by him previously, which implicated C., was put to him under sect. 3 of 28 & 29 Vict. c. 18, and so came to the minds of the jury. B. gave evidence, and a written confession made by him implicating C. was put to him in cross-examination and so came to the minds of the jury. The judge, in summing up the case, directed the jury to disregard the two written confessions and advised them to acquit C.; but he was found guilty. C. appealed.

The Court allowed the appeal and quashed the conviction.

R. v. DIBBLE, 72 J. P. 498—C. C. A.

**5. Previous Offences—Admissibility—Using Instruments with Intent to Procure Miscarriage—Use by Prisoner of Similar Instruments on other Women.]—**The prisoner was indicted under sect. 58 of the Offences Against the Person Act, 1861, for feloniously using instruments upon a certain woman with intent to procure her miscarriage.

At the trial evidence, on behalf of the prosecution, of another woman was admitted to prove that, about nine months before the commission of the offence alleged in the indictment, the prisoner had used similar instruments upon her after she had told him that she was pregnant, and that he had then told her that he would "put her all right," and that he had "put dozens of girls right."

HELD—(by Kennedy, Darling, Jelf, Bray and A. T. Lawrence, J.J.; Alverstone, L. C. J., and Ridley, J., dissenting)—that the evidence was admissible.

R. v. BOND, [1906] 2 K. B. 389; 75 L. J. K. B. [693; 70 J. P. 424; 54 W. R. 586; 95 L. T. 296; 22 T. L. R. 633; 21 Cox, C. C. 252—C. C. R.]

**6. Res judicata—Dismissal of Charge "without prejudice"—Subsequent Prosecution for same Offence.]—**The respondent was charged at petty sessions with larceny of property not exceeding in value 5s., and consented to the justices hearing the case. The justices heard the case, and made an order dismissing the charge "without prejudice," and gave the respondent a certificate of such dismissal.

HELD—that the dismissal, although expressed to be "without prejudice," was a bar to a subsequent prosecution for the same offence.

GREAT SOUTHERN AND WESTERN RAILWAY  
[v. GOODING, [1908] 2 I. R. 429—K. B. D.]

**7. Two Prisoners Charged Jointly—Statement made by One to Police—Written Down and Read over to Both—Admissibility against Others.**

*Seemle*, where B. and P. are in custody charged with stealing and receiving certain property, and

Y. D.

B. writes out a statement, which is said to inculcate P., and the police place B. and P. together and read over to them the written statement of B., that statement does not become evidence against P.

R. v. PEARSON (No. 1), 72 J. P. 449—C. C. A.

**8. Witness—Subpoena—Power to Set Aside—Improper Motives—Minister of Crown.]—**The High Court has jurisdiction both in civil and criminal cases to set aside a subpoena served on a witness, if satisfied that he cannot give relevant evidence, and that the subpoena has been served on him for some ulterior purpose.

Subpoenas served on Ministers of the Crown were set aside on these grounds, but Ministers have no special privilege from the obligation of obeying a subpoena.

R. v. BAINES AND ANOTHER, 72 J. P. 524; [1908] [W. N. 238; 25 T. L. R. 79; 53 Sol. Jo. 101—Div. Ct.]

**(c) Indictment Generally.**

**9. Amendment—Substitution of One Offence for Another.]—**The defendant was indicted under sect. 13 (1) of the Debtors Act, 1869, for that he, in incurring a certain debt, did unlawfully and fraudulently obtain credit by means of false pretences, which were set out. The prosecution failed to prove the false pretences and the Court amended the indictment by striking out all the false pretences and substituting therefor the words "by means of fraud."

HELD—that sect. 13 (1) of the Debtors Act, 1869, contained two different offences, namely, the obtaining credit (1) under false pretences, or (2) by means of other fraud. That the amendment made here amounted to the substitution of one offence for another, and that there was no power to make such an amendment.

R. v. BENSON, [1908] 2 K. B. 270; 77 L. J. K. B. [644; 72 J. P. 286; 98 L. T. 933; 24 T. L. R. 557; 52 Sol. Jo. 516—C. C. R.]

**10. Charging Two Separate Felonies—Practice—Election as to Count.]—**An indictment is not to be treated as bad on appeal because it charges distinct felonies in different counts.

The long established rule is that, if the prisoner will be embarrassed, the judge at the trial will either quash the indictment, or require the prosecution to elect upon which count to proceed.

R. v. ELLIOTT, [1908] 2 K. B. 452; 72 J. P. 285; [99 L. T. 200; 24 T. L. R. 645—C. C. A.]

**11. Names Known but not Stated—Conspiracy Charge with "Divers other Persons"—Not Alleged that such Persons were "Persons Unknown."]**—Where an indictment charges a defendant with conspiracy with "divers other persons," the indictment must either allege that such other persons are unknown, or, if they are known, must give their names.

R. v. PERRIN AND ANOTHER, 72 J. P. 144; 24 [T. L. R. 487—Walton, J.]

Generally—Continued.

(d) Jurisdiction.

[No paragraphs in this vol. of the Digest.]

(e) Poor Prisoners' Defence Act, 1900.

[No paragraphs in this vol. of the Digest.]

(f) Practice Generally.

**12. Juryman Intoxicated During Trial—Conviction—Information on which Rule nisi can be Obtained to Set Aside Conviction—Affidavit from One of the other Jurymen.**—On an application for a rule nisi for certiorari or alternatively for a venire de novo a solicitor swore an affidavit that his client was tried at Quarter Sessions, and that during the trial he noticed one of the jurymen was sitting in a huddled position in the back row of the jury box; that he was informed by one of the other eleven jurymen, who was sitting next but one to the jurymen aforesaid, that the latter appeared during the trial to be very tired and sleepy, gave some indication of having taken drink earlier in the day, took no part whatever in the deliberation of the jury, and did not join in the verdict. His informant also stated that in the next case it was found impossible to proceed, the aforesaid jurymen having fallen fast asleep, and only being roused by repeated shakings. The jury did not leave the box between the two cases.

HELD—that on these materials the Court would not grant a rule, but that they would give leave to renew the application on further and better materials. The Court was of opinion that if the application was to succeed, there should be an affidavit as to the circumstances from one of the other eleven jurymen.

EX PARTE MORRIS, 72 J. P. 5—Div. Ct.

**13. No Evidence at Close of Prosecutor's Case—Duty of Judge.**—If at the close of the case for the prosecution there is no evidence against the prisoner, the Judge need not necessarily stop the case unless appealed to to do so.

R. v. GEORGE, 25 T. L. R. 66—C. C. A.

**14. No Shorthand Notes—Validity of Proceedings—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 16.**—The provision as to a shorthand note in sect. 16 of the Criminal Appeal Act, 1907, is directory only; the proceedings are not invalidated by the fact of no note being taken.

R. v. RUTTER, 25 T. L. R. 73—C. C. A.

**15. Sentence—Length of Sentence Determined by the Treatment Prisoner is to Receive—Borstal System—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4.**—In fixing the length of sentence to be imposed, the Judge may properly take into consideration the treatment the prisoner is to receive. The Judge may therefore give a longer sentence than might otherwise be proper in order that the prisoner may receive the full benefit of the Borstal system.

R. v. KIRKPATRICK, 25 T. L. R. 66—C. C. A.

**16. Sentence—Taking into Account other Offences not yet Tried.**—In sentencing a prisoner

a Court may in a proper case have regard to other offences alleged against him even in other jurisdictions if he admits his guilt in respect of them.

R. v. SYRES, 25 T. L. R. 71—C. C. A.

**17. Venue—Application to Change—Special Jury—View Jury—Alleged Prejudice.**—A rule nisi for a certiorari was obtained in order to remove from the Central Criminal Court into the High Court an indictment by which the applicant and another person were jointly indicted for alleged conspiracy to defraud persons who might become debenture holders in the North Wales Quarries, Limited, and the Welsh Slate Quarries, Limited.

The appellant desired to have a special jury, and that the jury should view the premises, these advantages not being available to a defendant at the Central Criminal Court. The applicant also alleged that for certain reasons there would be a prejudice against him among Central Criminal Court jurors.

HELD—on the facts, that a special jury was unnecessary, that a view was not required, and that the allegations of prejudice had not been made out.

R. v. GYDE, 72 J. P. 504—Div. Ct.

(g) Prevention of Crimes.

[No paragraphs in this vol. of the Digest.]

(h) Principals and Accessories.

**18. Abettor Convicted of Misdemeanour as Principal—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 5—Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), s. 8.**—Upon an appeal to Quarter Sessions by the owner of a motor car against a summary conviction on a charge of having driven the car along a highway at a speed dangerous to the public, there was a conflict of evidence as to whether at the crucial moment the owner of the car was himself actually driving or was sitting on the front seat next to a lady who was driving with his consent and approval. Quarter Sessions found that the owner must have known that the speed was dangerous to the public, that he was in control of the car, and that he could and ought to have prevented the driver from driving at such dangerous speed, but that he did not interfere in any way. They affirmed the conviction, being of opinion that the owner (if not driving himself) was aiding and abetting the commission of the offence.

HELD—that, as the offence was a misdemeanor, the owner of the car, even if not actually driving the car, but merely aiding and abetting the commission of the offence, was liable to be convicted summarily as a principal, and had been properly so convicted.

*Benford v. Sims* ([1898] 2 Q. B. 641; 57 L. J. Q. B. 655; 47 W. R. 46; 71 L. T. 718—Div. Ct.) approved.

*Du Cros v. Lambourne*, [1907] 1 K. B. 40; 76 [L. J. K. B. 50; 70 J. P. 525; 95 L. T. 782; 23 T. L. R. 3; 5 L. G. R. 120; 21 Cox, C. C. 311—Div. Ct.]



**Generally—Continued.**

**19. Master and Servant—Employer's Liability for Manager's Acts—Evidence of Knowledge.**—A vendor of surgical instruments was charged with sending an indecent catalogue and indecent articles through the post. He was in fact away from home when the catalogues and articles were sent by his manager; but the articles came out of stock on the premises.

**HELD**—that, having regard to the ordinary course of trade management, it could not be said that there was no evidence of knowledge on the master's part; and further that the jury were entitled to disbelieve the defence set up by him that the articles were only being kept until they could be returned to the makers and that the manager had sent them out for his purposes and had embezzled the money received.

*R. v. KEY*, 52 Sol. Jo. 784—C. C. A.

**(i) Restitution of Property.**

**20. Restitution Order—Goods Stolen—Proceeds—Order for Restitution—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 100.**—Two men, E. and P., were convicted at sessions of stealing from the prosecutors certain goods, and a man named I. was at the same time convicted of feloniously receiving them. I. had bought the goods from E. and P., and had then sold them to Dettmer & Co., who took and paid for them *bonâ fide*. An order was made at Sessions for the restitution of the stolen goods to the prosecutors, and also for the restitution to them of certain bank notes and moneys, which were the proceeds of the stolen goods, and were found on the prisoners at the time of their arrest.

**HELD**—that the Sessions should have ordered the restitution either of the stolen goods or of their proceeds, but not of both.

*R. v. LONDON JJ., EX PARTE DETTMER & CO.*, [72 J. P. 513—Div. Ct.]

**21. Restitution Order—Right of Appeal against—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 6 (2)—Criminal Appeal Rules, 1903, r. 9**—Notwithstanding sect. 6, sub-sect. 2, of the Criminal Appeal Act, 1907, and r. 9 of the Criminal Appeal Rules, 1908, a person against whom an order of restitution has been made on a conviction has no right of appeal against that order, even if the prisoner appeals against the conviction. If, however, on an appeal against the conviction, the Court of Criminal Appeal propose to vary the order or to annul it, he has a right to be heard.

*R. v. ELLIOTT*, [1908] 2 K. B. 452; 77 L. J. [K. B. 812; 72 J. P. 285; 99 L. T. 200; 24 T. L. R. 645—C. C. A.]

**(j) Reward.**

[No paragraphs in this vol. of the Digest.]

**II. SPECIFIC OFFENCES.****(a) Miscellaneous Offences.**

**22. Blasphemous Libel—What is.**—The mere denial of the truth of the Christian religion, or

of the Scriptures, is not enough *per se* to constitute a speech a blasphemous libel. A wilful intention to pervert, insult, and mislead others by means of licentious and contumelious abuse applied to sacred subjects, or by wilful misrepresentations or wilful sophistry calculated to mislead the ignorant and unwary, must also appear.

The summing up of Coleridge, L. C. J., in *R. v. Ramsey and Foote* ((1883) 1 C. & E. 126; 15 Cox, C. C. 231), as to what constitutes blasphemous libel, approved of and followed in preference to the view expressed by Stephen, J. *R. v. BOULTER*, 72 J. P. 188—Phillimore, J.

**22a. Bribing Police "Agent"—Prevention of Corruption Act, 1906 (6 Edw. 7, c. 34), s. 1.**—A police constable is an "agent" within the meaning of sect. 1 of the Prevention of Corruption Act, 1906.

*GRAHAM v. HART*, [1908] S. C. (5) 26; 45 Sc. [L. R. 332—Ct. of Justy.]

**23. Disorderly Behaviour while Drunk—Three Previous Convictions Involving Drunkenness—No Power to Order Imprisonment in Addition to Detention in Inebriate Reformatory—Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 2 (1).**—When a prisoner is convicted upon indictment under sect. 2 (1) of the Inebriates Act, 1898, of an offence mentioned in Sched. I. thereto, and also of three previous convictions for similar offences, and of being an "habitual drunkard," he cannot be sentenced to imprisonment in addition to detention in an inebriate reformatory.

*R. v. BRIGGS*, 25 T. L. R. 105; [1908] W. N. 244 [—C. C. A.]

**24. Old Metal Dealers—Mens Rea—Entry of Name and Address of Person from whom Old Metal purchased—False Name and Address given by Seller.**—A dealer in old metal in Ireland is bound by statute (*cf.* English Public Health Acts Amendment Act, 1907, sect. 86 (2)) to enter the true name and place of abode of the person from whom he purchases an article. It is no answer that he entered the name and place of abode given by the seller, and had no reason to believe that they were not the true name and abode.

*TOPPIN v. MARCUS*, [1908] 2 I. R. 423—[K. B. D.]

**25. Riot—What constitutes—Persons Riotously and Tumultuously Assembled Together—Riot (Damages) Act, 1886 (49 & 50 Vict. c. 38), s. 2.**—There are five necessary elements of a riot: (1) number of persons, three at least; (2) common purpose; (3) execution or inception of the common purpose; (4) an intent to help one another, by force if necessary, against any person who may oppose them in the execution of their common purpose; (5) force or violence not merely used in demolishing but displayed in such a manner as to alarm at least one person of reasonable firmness and courage.

Therefore, these five elements must be proved in order to obtain compensation under sect. 2

**Specific Offences—Continued.**

of the Riot (Damages) Act, 1886, for the destruction of a building by persons riotously and tumultuously assembled together.

**FIELD AND OTHERS v. RECEIVER FOR METROPOLITAN POLICE DISTRICT**, [1907] 2 K. B. 853; 76 L. J. K. B. 1015; 71 J. P. 494; 97 L. T. 639; 23 T. L. R. 736; 5 L. G. R. 1121—Div. Ct.

**(b) Abortion.**

**26. Woman consenting to Use of Instrument by Another to Procure her own Miscarriage—No Allegation of Pregnancy in Indictment—Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 58.**—A woman who consents to another person using an instrument upon her with the intent to procure her miscarriage can be convicted of being "present aiding and abetting and assisting" the other to use an instrument upon her with the intent to procure her miscarriage under sect. 58 of the Offences Against the Person Act, 1861, although there is no allegation in the indictment that she was "with child" at the time of the offence.

**R. v. SOCKETT**, 72 J. P. 428; 24 T. L. R. 893; [52 Sol. Jo. 729—C. C. A.

**(c) Assault.**

**27. Information—Party Aggrieved—Not a Free Agent—Proceedings by Another on his Behalf—Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 42.**—An information under sect. 42 of the Offences Against the Person Act, 1861, for unlawfully assaulting a person who is so feeble, old and infirm as to be incapable of instituting proceedings, and who is not a free agent but completely under the control of the person committing the assault, and is therefore unable to authorise proceedings to be taken, may be laid by another person on his or her behalf.

**Nicholson v. Booth** ((1888), 57 L. J. M. C. 43; 52 J. P. 662; 58 L. T. 187; 16 Cox, C. C. 373—Div. Ct.) distinguished.

**PICKERING v. WILLOUGHBY**, [1907] 2 K. B. 296; [76 L. J. K. B. 709; 71 J. P. 311; 97 L. T. 244; 23 T. L. R. 466; 21 Cox, C. C. 493—Div. Ct.

**(d) Bigamy.**

**28. Belief that First Marriage is Invalid.**—That the prisoner has chosen to think that there is some technical defect in his first marriage is no defence to a charge of bigamy.

**R. v. BAYLEY**, *Times*, July 25th, 1908—C. C. A.

**29. Second Marriage Contracted Abroad—Necessity for Averment in Indictment that Defendant is a British Subject—Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 57—Proviso.**—In an indictment for bigamy in which the second marriage is alleged to have been contracted abroad, it is not necessary to allege in

the indictment that the defendant was a subject of his Majesty.

**R. v. AUDLEY**, [1907] 1 K. B. 383; 76 L. J. K. B. 270; 71 J. P. 101; 96 L. T. 160; 23 T. L. R. 211; 21 Cox, C. C. 374—C. C. R.

**(e) Breach of the Peace.**

[No paragraphs in this vol. of the Digest.]

**(f) Concealment of Birth.**

[No paragraphs in this vol. of the Digest.]

**(g) Conspiracy.**

**30. Conspiracy to Force Employer to take back Dismissed Workman—Persistently Following—Watching Place of Business and Private Residence—Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 7 (2)—Trades Disputes Act, 1906 (6 Edw. 7, c. 47), s. 2 (1).**—On an indictment under sect. 7 of the Conspiracy and Protection of Property Act, 1875, for persistently following D. and watching his place of business and private residence in order to coerce him to reinstate a workman, it was proved that the defendants and others had persistently "watched" his business premises and followed him to his residence.

**HELD**—(1) that if the acts were done with the intention alleged the defendants were guilty, and (2) that sect. 2 (1) of the Trades Disputes Act, 1906, did not apply to "watching" the private residence.

**R. v. WALL**, 21 Cox, C. C. 401—Palles, L. C. B.

**(h) Cruelty to Children.**

**31. Wife and Children Deserted by Husband—Omission to Pay Part of Earnings to Wife—Custody—Wilful Neglect—Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), ss. 1, 23.**—The prisoner was indicted under sect. 1 of the Prevention of Cruelty to Children Act, 1904, for that he, having the custody of his children, did wilfully neglect them in a manner likely to cause them unnecessary suffering and injury to their health.

The prisoner had deserted his wife and children, and though he earned wages, did not send any part of his earnings to his wife. An aunt of the wife frequently provided the children with meals, but they had barely enough, even with the aunt's help, and without it they would have had to go to the workhouse.

**HELD**—that the prisoner had the custody of the children within the meaning of the Act, and that the omission of the prisoner to pay any part of his earnings to his wife was wilful neglect likely to cause unnecessary suffering and injury to the health of the children within the meaning of the Act.

**R. v. CONNOR**, [1908] 2 K. B. 26; 77 L. J. K. B. 527; 72 J. P. 212; 98 L. T. 932; 24 T. L. R. 483; 6 L. G. R. 897; 52 Sol. Jo. 444—C. C. R.

**(i) Disorderly Houses.**

**32. Brothel—Block of Flats—Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69),**

**Specific Offences—Continued.**

s. 13 (3).]—The appellant was employed by the owner as the porter in charge of a block of eighteen flats, among the tenants of which were twelve women who were in the habit of bringing men to them for the purpose of prostitution. The appellant knew the purpose for which the women used the premises, and was convicted under sect. 13 (3) of the Criminal Law Amendment Act, 1885, of being wilfully a party to the continued use of the premises or part thereof as a brothel.

**HELD**—that, as it was open to the magistrate upon the evidence to find that it was not a case of each single flat being used for prostitution by one woman who was the tenant of it, but of the building as a whole being used as a brothel, the conviction was right.

*Singleton v. Ellison* ([1895] 1 Q. B. 607; 64 L. J. M. C. 123; 59 J. P. 119; 72 L. T. 236; 43 W. R. 426; 18 Cox, C. C. 79—Div. Ct.) considered.

*DUROSE v. WILSON*, 71 J. P. 263; 96 L. T. 645; [21 Cox, C. C. 421—Div. Ct.]

**(j) Embezzlement.**

[No paragraphs in this vol. of the Digest.]

**(k) Falsification of Accounts.**

[No paragraphs in this vol. of the Digest.]

**(l) Forgery.**

[No paragraphs in this vol. of the Digest.]

**(m) Housebreaking Implements, Possession of.**

[No paragraphs in this vol. of the Digest.]

**(n) Larceny, False Pretences, and Receiving Stolen Goods.**

**33. Article Lost—Intention of Appropriation when Article comes into Person's Possession—Direction of Judge.**—In every case where an article has been lost and has come into the possession of a person who is charged with stealing it, a Judge need not direct the jury that to convict the prisoner they must find that he had an intention to appropriate the article when it first came into his possession. The question whether such a direction should be given depends upon the defence set up by the prisoner.

*Semble*, such a direction should be given where the prisoner's case is that when the article came into his possession he intended to return it to its owner, but subsequently determined to appropriate it.

*R. v. Thurborn* ((1849) 13 J. P. 459; 1 Den. C. C. 387) discussed.

*R. v. MORTIMER*, 72 J. P. 349; 99 L. T. 204; 24 [T. L. R. 745—C. C. A.]

**34. Evidence—Brass Locomotive Tubes Stolen—Brass Locomotive Tubes seen in Prisoner's Cart in Charge of his Servant—Evidence of Identity of Tubes—Evidence of Prisoner's Possession of Tubes.**—Of 104 brass locomotive tubes, lying in certain works, fifty were found to be missing. On the trial of P., a marine store dealer, with

others, for stealing and receiving these tubes, a witness for the prosecution produced a tube which he said was "similar to some of those that were taken." Another witness saw from sixteen to twenty brass locomotive tubes put by certain men into a cart with P.'s name on it, and in charge of B., P.'s servant, at a spot some 400 yards from the works, on the morning after the fifty tubes were missed. He said the tubes he saw were "similar" to the tube that had been produced. A third witness saw P.'s cart, in charge of B., drive towards and away from the spot. P. had told the police he had never seen any tubes. No tubes were found on P.'s premises. P. gave evidence at the trial that on this morning a man came to his premises and asked if he would fetch some scrap; that he told B. to go and fetch it; that when B. and certain men returned with brass locomotive tubes, he said he would have nothing to do with them and that they must back the cart out of his yard; that he then went into the house; that he thought there were eight or nine tubes in the cart, and that he never saw them again. P. was convicted.

**HELD**, on appeal, that the conviction must be quashed, as there was no sufficient evidence that the tubes in the cart were the stolen tubes, or that they were ever in the possession of P.

The question was raised as to whether, where a man is indicted for stealing, and in another count for receiving certain property, and there being no evidence of larceny, the jury return a general verdict of guilty, the conviction ought not to be quashed on the ground that in such a case there must be evidence to go to the jury on each count.

*R. v. PEARSON* (No. 1), 72 J. P. 449—C. C. A.

**35. False Pretences—Evidence.**—The defendant was indicted for that he did falsely pretend that he "was then carrying on the business of publisher on his own account in Norfolk Street, Strand, London," and did thereby induce the prosecutor to accept and indorse a certain valuable security, whereas in fact he "was not then carrying on the business of publisher on his own account in Norfolk Street, Strand, London."

The prosecutor swore that the reason why he indorsed the valuable security was because the defendant told him that he had left his situation voluntarily and had started in business on his own account.

**HELD**—that there was evidence to go to the jury, although the only part of the pretence traversed in the indictment was the address.

*R. v. FINCH*, 72 J. P. 102—C. C. R.

**35a. False Pretences—Evidence—Advertisement—Money to be Earned by Writing in Spare Time—Deposit—Selling Advertiser's Goods—Return of Deposit to Those Dissatisfied.**—This was an appeal against a conviction for obtaining money by false pretences. The appellant had advertised that persons applying to him could earn money in their spare time. To applicants he sent circulars, leading them to suppose that they were to earn the money by writing, and asking a deposit of 2s. before beginning the work. The



**Specific Offences—Continued.**

deposit having been sent, it appeared that the employment consisted in inducing other people to buy a stylographic pen or other goods supplied by the appellant. Afterwards the appellant sent a postcard to each applicant, saying that the deposit would be returned to any applicant who was dissatisfied, and would write and say so. Some demanded the deposit back, and received it.

HELD—that there was ample evidence to support a conviction.

R. v. PAYNTER, *Times*, December 19th, 1908—  
[C. C. A.]

**36. Goods in Custody of Sheriff—Goods the Prisoner's Property—Effect of Verdict—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4.]**—The prisoner was indicted for stealing seven live fowls the property of the High Sheriff of Worcestershire. An execution had been levied on the goods of the prisoner's wife, and while the sheriff's officer was in possession under the execution of certain live fowls then on the premises the prisoner came and took away seven of them. In answer to questions left to them by the Chairman of Quarter Sessions, the jury found (1) that the seven fowls taken by the prisoner were his own property, and (2) that they were seized by the sheriff as part of the property of the prisoner's wife under the impression that they were her goods. The Chairman directed a verdict of guilty to be entered, but gave a certificate for leave to appeal.

HELD—that on the findings of the jury the proper verdict was one of not guilty.

R. v. KNIGHT, 25 T. L. R. 87; 53 Sol. Jo. 101—  
C. C. A.]

**37. Half-Sovereign Taken—Intention to return the Half-Sovereign in Order to Get More Money—Larceny.]**—F. entered a tobacconist's shop, and asking for twopennyworth of tobacco, gave the shop-woman a half-sovereign, which she put down on the counter. Whilst the shop-woman obtained the change, F. took back the half-sovereign. F. received the change of 9s. 10d., and asked the shop-woman if she could give him a sovereign for ten shillings and half-a-sovereign. The shop-woman refused, and then, missing the half-sovereign, which she had placed on the counter, said: "Where is the half-sovereign that I gave you change for?" F. said "I have it," and handed it back to her. F., together with G. and I. who were outside the shop, and had been in the company of F. under circumstances leading to suspicion, were convicted of stealing the half-sovereign. G. appealed, and contended that the offence of F., if any, was an attempt to obtain money by the false pretence that the half-sovereign was his own, and that there was no larceny of the half-sovereign, and alternatively that the offence was only attempted larceny.

HELD—that the offence of F. was larceny, and that G. and I. were properly convicted as being concerned with him in stealing.

R. v. GREENAWAY, 72 J. P. 389; 24 T. L. R. 755  
[—C. C. A.]

**38. Indictment—Stealing Pheasants' Eggs—Averment of Reduction into Possession—Receiving Count—Necessity of Averment as to the Stealing.]** The defendants were indicted for stealing and receiving "one thousand pheasants' eggs of the goods and chattels of and of, and belonging to" Sir Walter Gilbey.

HELD—that by reason of the large number of eggs mentioned, and the use of the additional words "of and belonging to," the indictment sufficiently averred that the eggs had been reduced into possession and were the subject of larceny.

R. v. ROUGH ((1779) 2 East, P. C. 607) distinguished. R. v. COW ((1844) 1 C. & K. 494) doubted.

The receiving count did not contain any allegation that the stealing of the eggs amounted to a felony either at common law or by virtue of the Larceny Act, 1861.

HELD—that such an allegation was not necessary, it being sufficient to allege a receiving, "knowing them to have been feloniously stolen."

R. v. STRIDE AND ANOTHER, [1908] 1 K. B. [617; 77 L. J. K. B. 490; 72 J. P. 93; 98 L. T. 455; 24 T. L. R. 243; 52 Sol. Jo. 209—  
C. C. R.]

**39. Metal Fired to House—Charge of Common Law Larceny and Receiving—Acquittal of Person Stealing—Conviction of Others for Receiving—Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 31, 91—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), ss. 4 (1), 5 (1).]**—Four persons were charged in two counts of an indictment with larceny of lead piping at common law and receiving it well knowing it to have been stolen. The evidence showed that the first prisoner stripped the lead piping from a house, and the second and third prisoners carried it away to the fourth prisoner. The first prisoner was acquitted upon the ground that he was not guilty of larceny at common law, but only under sect. 31 of the Larceny Act, 1861, for which offence he was not indicted. The jury found the second and third prisoners guilty of larceny and the fourth of receiving.

HELD—that the jury upon the evidence would, if their attention had been called to the particular point, have convicted the three prisoners of receiving, and therefore under sects. 4 (1) and 5 (1) of the Criminal Appeal Act, 1907, the appeal would be dismissed.

R. v. COOPER, 24 T. L. R. 867—C. C. A.]

**40. Obtaining Credit under False Pretences or by Means of Fraud—Verdict Negating Fraud—Not Guilty—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 13 (1).]**—The prisoner was indicted under sect. 13, sub-sect. 1, of the Debtors Act, 1869. At the trial the Judge left the following questions to the jury, to which they gave the following answers: (1) Q.—"Is the prisoner guilty of obtaining goods by false pretences with intent to defraud?" A.—"Not guilty." (2) Q.—"Is he guilty of attempting to obtain goods by false pretences with intent to defraud?" A.—

**Specific Offences—Continued.**

"Not guilty." (3) Q.—"Is he guilty of obtaining credit by means of false pretences?" A.—"Guilty." (4) Q.—"If so, did he so obtain them with intent to defraud?" A.—"Not guilty." On these answers the Judge entered a verdict of guilty.

HELD, quashing the conviction—that on the answers of the jury a verdict of not guilty should have been entered, inasmuch as under sect. 13, sub-sect. 1, of the Debtors Act, 1869, the intention to defraud must be established.

R. v. MUIRHEAD, 25 T. L. R. 88—C. C. A.

**41. Ownership of Property—House of Husband—Goods Belonging to Wife—Amendment.]**—The defendants were indicted for breaking and entering the dwelling-house of H., and therein stealing certain goods and chattels of the said H., and in a second count they were charged with feloniously receiving the said goods and chattels. The evidence showed that the dwelling-house belonged to H., but that the goods and chattels stolen were the separate property of the wife of H. There was no evidence of any bailment of any of the said goods and chattels. After some of the defendants had given evidence, but before the verdict was given, application was made by the prosecution to amend the indictment by substituting the wife in place of the husband as owner of the said goods and chattels. This application was refused, and the defendants were convicted.

HELD—that the indictment was bad, though it ought to have been amended, and that the conviction must be quashed.

R. v. MURRAY, [1906] 2 K. B. 385; 75 L. J. K. B. [593; 70 J. P. 295; 95 L. T. 295; 22 T. L. R. 596; 21 Cox, C. C. 250—C. C. R.

**42. Receiving Stolen Goods—Constructive Possession.]**—When stolen property is traced to anyone's possession an explanation must be forthcoming. Where the necessary explanation has been given and the evidence has failed to prove that the prisoner saw or interfered with the stolen goods, his bare knowledge of their whereabouts is not sufficient to amount to constructive possession.

R. v. ORRIS, 126 L. T. Jo. 80—C. C. A.

**43. Receiving Stolen Goods—Indictment—Sufficiency.]**—In an indictment for receiving it is sufficient to allege knowledge that the goods were "feloniously stolen," without stating whether the theft was felony at common law or by statute.

R. v. STRIDE AND ANOTHER, [1908] 1 K. B. [617; 77 L. J. K. B. 490; 72 J. P. 93; 98 L. T. 455; 24 T. L. R. 243; 52 Sol. Jo. 209—C. C. R.

**44. Receiving Stolen Goods—Proof of Knowledge—Previous Conviction for Fraud or Dishonesty within Five Years—Admissibility of Evidence of—Notice in Writing of Intention to Prove—No Notice to Produce such Notice—Duplicate Original—Secondary Evidence—Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112).]**—Upon an indictment for receiving stolen goods

the prosecution claimed to give evidence of a previous conviction for a similar offence within five years. A notice in writing had been served on the prisoner informing him of their intention to do so, but no notice to produce such notice had been given. The officer serving the notice had made out and signed two duplicate originals, and he testified that he served one on the prisoner, and he produced the other in Court.

HELD—that the service of the notice was sufficiently proved, and that the previous conviction could be given in evidence.

HELD, FURTHER—that as the point was covered by authority the Court would not state a special case, although the Criminal Appeal Act, 1907, came into force shortly after the conviction and before the Court announced its decision not to state a case.

R. v. WHITLEY, 72 J. P. 272—Qr. Sess.

**45. Receiving Stolen Goods—Receipt of, by Servant—No Evidence of Authority by Master to Servant to Receive Goods.]**—A master cannot be convicted of receiving stolen property well knowing it to have been stolen where the only evidence is that his servant received the goods, and there is no evidence that the servant received them with the authority or knowledge of the master.

R. v. PEARSON (No. 2), 72 J. P. 451—C. C. A.

**46. Sale of Pirated Music—Whether Larceny—Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 23.]**—The mere sale of pirated music is not larceny at common law, notwithstanding sect. 23 of the Copyright Act, 1842, which provides that books unlawfully printed or imported without the consent of the registered proprietor of the copyright thereof, shall be deemed to be his property, and that after demanding them in writing he may sue for their recovery, or for damages for their detention or conversion.

R. v. KIDD AND ANOTHER, 72 J. P. 104—Common Serjeant.

**(o) Malicious Damage.**

See No. 54, *infra*.

**(p) Manslaughter.**

**47. Lapse of Time—Year and a Day.]**—A person cannot be convicted of manslaughter if a year and a day elapse between the injury to and death of his victim. If, however, a jury find that, although the victim would have died eventually from the first injury, a second injury inflicted within a year of death accelerated death, they may convict.

R. v. Martin ((1832), 5 C. & P. 128, approved, R. v. DYSON, [1903] 2 K. B. 454; 77 L. J. K. B. 813; 72 J. P. 303; 99 L. T. 201; 24 T. L. R. 653; 52 Sol. Jo. 535—C. C. A.

**48. Manslaughter or Murder—Provocation by Words alone—Sudden Confession by Wife of Adultery.]**—There may be, under special circumstances, such a provocation by words alone as will reduce a killing, which would otherwise be murder, to manslaughter,

**Specific Offences—Continued.**

*R. v. Rothwell* ((1871), 12 Cox, C. C. 145) followed.

*R. v. JONES*, 72 J. P. 215—Bucknill, J.

**(q) Murder.**

See also No. 79, *infra*.

**48a. Influence of Drink—Want of Premeditation—Matters for Home Secretary's Consideration.**—In refusing leave to appeal against a conviction for murder the Court said that circumstances as to want of premeditation and the amount of drink taken by the prisoner before he committed the murder were matters for the Home Secretary to consider.

*R. v. BURKE*, *Times*, December 19th, 1908—  
[C. C. A.]

**49. Murder—Insanity—Rider added by Jury at Trial—Evidence—Rider added by Coroner's Jury.**—At a trial for murder, a verdict of "guilty," with a rider added by the jury, that the crime was committed in a "frenzied state of mind," does not amount to a verdict of insanity.

Where a coroner's jury have added to their verdict of wilful murder a rider that the guilty person was not responsible for what she did, the rider is immaterial, and no part of the inquisition. Evidence of the rider cannot be given at a trial on the inquisition.

*R. v. HARDING*, 25 T. L. R. 139—C. C. A.

**50. Verdict of Murder—Additions by Jury—Recommendation to Mercy—Act not "Premeditated"—Provocation.**—A prisoner sought leave to appeal against his conviction for the murder of his wife. The jury had added to their verdict that they strongly recommended the prisoner to mercy, that the act was not premeditated and that there had been great provocation.

**HELD**—that the jury did not intend to return a verdict of manslaughter, that by "unpremeditated" they meant a murder not thought out beforehand, and not that the prisoner did not intend to kill his wife, and that leave to appeal must be refused.

*R. v. FAIRBROTHER*, *Times*, December 12th, 1908  
[—C. C. A.]

**(r) Obscene Books.**

**51. Sending Obscene Things by Post—Editor of English Newspaper Inserting Advertisements of Persons Abroad Offering Indecent Books and Photographs for Sale—Post Office (Protection) Act, 1884 (47 & 48 Vict. c. 76), s. 4—Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), s. 8.**—Certain persons carrying on business abroad caused to be inserted in a newspaper in England advertisements of books and photographs. An officer of police wrote to the advertisers for samples of the books and photographs as advertised, and received in reply through the post from abroad the obscene books and photographs specified in the indictment. The editor was indicted for that he did sell, utter and publish, and cause and procure to be sold, uttered, and

published by the several advertisers, certain obscene libels, viz., the said books and photographs, and also under the Post Office (Protection) Act, 1884, for that he did send, and cause and procure to be sent by the said several advertisers, certain postal packets which enclosed the said indecent and obscene books and photographs, and also for that he did conspire with the said several advertisers to commit the above offences.

The jury were directed that if they were satisfied that the books and photographs so sent to the police were obscene, and that the defendant at the time he inserted the advertisements in his newspaper knew the general character of what he was advertising, and that by the advertisements he brought about the sale to the police, they ought to convict him. The defendant was convicted on all the counts.

**HELD**—the conviction was right

*R. v. DE MARNEY*, [1907] 1 K. B. 388; 76 L. J. [K. B. 210; 71 J. P. 14; 96 L. T. 159; 23 T. L. R. 221; 21 Cox, C. C. 371—C. C. R.]

**(s) Perjury.**

**52. Evidence—Recitals in Earlier Deed—Earlier Corrupt Evidence.**—The fact that a person executed a deed in which she recited that she was the daughter of a certain man is evidence against her on a charge of having at another time sworn that she was not the daughter of that man.

Proof that a person charged with perjury in 1907 has corruptly given the same evidence in 1906, is admissible at the trial of that person.

*R. v. HAMILTON*, *Times*, May 11th, 1908—  
[C. C. R.]

**(t) Treason.**

[No ] paragraphs in this vol. of the Digest.]

**(u) Vagrancy.**

[No paragraphs in this vol. of the Digest.]

**(v) Women and Girls, Offences Against.**

[No paragraphs in this vol. of the Digest.]

**III. CONVICTS' PROPERTY.**

[No paragraphs in this vol. of the Digest.]

**IV. CRIMINAL APPEALS.****(a) Generally.**

**53. Leave to Appeal against Conviction—Plea of Guilty.**—A prisoner who has pleaded guilty cannot have leave to appeal against his conviction.

*R. v. HAWES*, *Times*, June 20th, 1908—C. C. A.

**54. No proper Shorthand Notes of Proceedings at Trial—Destroying Trees—Malice—Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 16—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 16.**—The prisoner was indicted under sect. 20 of the Malicious Damage Act, 1861, for having cut and destroyed certain trees the property of his landlord. The prisoner was to leave his cottage on September 29th, and on the night of



**Criminal Appeals—Continued.**

September 28th he went into his garden and cut down the trees, being, as he said, under the impression that he was entitled to do so as he had planted them himself. The jury found the prisoner guilty, but added that he had done what he did in ignorance. The Chairman of Quarter Sessions declined to accept that verdict, and he again summed up the case to the jury, who eventually found the prisoner guilty, but recommended him to mercy. There was no proper shorthand note of the proceedings of the trial.

**HELD**—(1) that the provision of sect. 16 of the Criminal Appeal Act, 1907, as to shorthand notes of proceedings being taken at the trial was directory merely, and that the taking of a shorthand note was not essential to the validity of the proceedings; but (2), that there was so much doubt as to whether the jury did not intend to negative malice that it would not be safe to allow the conviction to stand.

R. v. RUTTER, 25 T. L. R. 73—C. C. A.

**(b) Appeal Against Sentence.**

**55. Charge of Stealing One Penny—Sentence of Five Years' Penal Servitude and Two Years' Police Supervision—Systematic Fraud—Previous Convictions—Right Principle.**—A woman was convicted for the theft of one penny, the property of the trustees of a hospital. She had obtained on application an ordinary collecting box, and it was proved that a penny had been contributed and dropped into the box and that subsequently the box was found broken open and empty. She was sentenced to five years' penal servitude and two years' police supervision. She had been many times previously convicted, being sentenced on one occasion to three years' penal servitude. In every case her offence had consisted of a fraud on a charity.

**HELD**—that a sentence of penal servitude was perfectly proper in the circumstances, and the Court should not interfere with its length; that the actual amount which a prisoner had succeeded in getting was no measure of the prisoner's guilt; and that, previous sentences proving ineffectual, to keep the prisoner out of mischief for a considerable time was quite right in principle.

R. v. MAURICE, *Times*, November 16th, 1908—  
[C. C. A.]

**55a. Influence of Drink—Deliberate Intention.**—Though the fact that a prisoner was under the influence of drink is no excuse for his offence, it has an important bearing on the question of deliberate intention.

R. v. MORTON, *Times*, December 19th, 1908—  
[C. C. A.]

*See also* No. 48A, *supra*.

**56. Leave to Appeal against Sentence—Plea of Guilty to Lesser Indictment Accepted—Attempted Suicide.**—A prisoner was charged with shooting with intent to murder and on another indictment with shooting with intent to do bodily harm. He offered to plead guilty to the second indictment. The offer was

accepted by the prosecution, who offered no evidence on the first indictment. He was sentenced to three years' penal servitude, and he now applied for leave to appeal against the sentence.

**HELD**—that a Judge, in passing sentence, had to take into consideration all the circumstances of the case, and that the fact that the prisoner had attempted suicide afterwards could not be taken into consideration at all.

Leave to appeal refused.

R. v. BAKER, *Times*, May 23rd, 1908—C. C. A.

**57. Legal Aid, Grant of—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23).**—In this case, where it appeared that the appellant had been previously convicted on eighteen occasions and sentenced to two terms of penal servitude, the Court of Criminal Appeal refused leave to appeal against a sentence of five years' penal servitude for stealing rugs.

Where a prisoner appeals against sentence, legal aid under sect. 10 of the Criminal Appeal Act, 1907, will only be granted in exceptional cases, for, on appeal against sentence, as a rule such aid will be of no assistance to the prisoner.

R. v. CRAWLEY, 72 J. P. 270; 24 T. L. R. 620—  
[C. C. A.]

**58. Penal Servitude to Follow Unexpired Sentence of Hard Labour—Offences Not Known to Judge Passing Earlier Sentence.**—This was an appeal from a sentence of five years' penal servitude, to commence at the expiration of a sentence of fifteen months' hard labour, which the appellant was then serving. At the time of the earlier sentence the Court was not aware of the offences for which the later sentence was passed.

**HELD**—that it was very undesirable that a sentence of penal servitude should follow on one of imprisonment with hard labour; that it was probable that the Judge who passed the earlier sentence would, if he had known of the other offences, have wished all the offences to be punished by one sentence (namely, one of penal servitude); and that therefore the sentence should be reduced to one of penal servitude, to commence from the date of conviction.

R. v. JONES, *alias* SPANIER, *Times*, November 23rd, 1908—C. C. A.

**59. Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 20—Maximum Sentence—Reason for Allowing Sentence to Run from Conviction.**—The words in sect. 20 of the Offences Against the Person Act, 1861, making three years' penal servitude as the maximum sentence for the offence of unlawfully causing grievous bodily harm, have been repealed. The effect of the section is correctly given in "Archbold's Criminal Practice" and in "Chitty's Statutes."

Where the Court, being desirous to have a case argued, has given leave to appeal against a sentence, there is some reason for ordering the sentence affirmed to run from the date of

**Criminal Appeals—Continued.**

conviction instead of from the date of dismissal of the appeal.

R. v. PETERS, *Times*, October 17th, 1908—  
[C. C. A.]

**60. Practice—Second Counsel—Letters Asking for Mercy—Fraud—Inquiry into Prisoner's History—Statements at Trial.**—At the hearing of this appeal against a sentence the Court, without saying what the practice would be when the appeal was on a point of law, declined to hear a second counsel for the appellant.

Letters written by persons whom the appellant has defrauded asking for mercy cannot be considered by the Court.

In cases of fraud it has been the invariable practice to inquire into the prisoner's history, and if in the course of the inquiry facts come out which damage him, the Judge may give effect to them.

When a statement has been made at a trial in the presence of a prisoner and his counsel, the Court will not allow it to be said that it was incorrect unless there is some evidence that it was, or some serious ground for believing it to be incorrect.

R. v. WEAVER, *Times*, May 23rd, 1908—C. C. A.

**61. Principles on which Allowed.**—The Court of Criminal Appeal may allow an appeal against sentence, where it appears that the Judge sentencing has proceeded upon a wrong principle, or has given undue weight to some of the facts proved before him; but they will not allow such an appeal merely on the ground that some of the members of the Court are of opinion that they would have given a sentence different from that imposed by the Judge at the trial.

R. v. SIDLOW, 72 J. P. 391; 24 T. L. R. 754—  
[C. C. A.]

**62. Principles that Guide the Court in Reducing Sentence—Pleas of Guilty—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 3 (c) and 4 (3).**—Where a prisoner has been tried, and the Judge at the Court of trial has heard all the evidence and seen the witnesses, the Court of Criminal Appeal will not interfere with the sentence imposed unless the Judge has gone wrong in principle, although members of the Court may be of opinion that they would not have inflicted so severe a sentence.

But where the prisoner has pleaded guilty, the Court of Criminal Appeal are in as good, or in nearly as good, a position to consider what is the proper sentence on reviewing the sentence as the Court of trial is on its imposition, and therefore, in such cases, the Court of Criminal Appeal will reduce a sentence which is in their opinion too severe.

R. v. NUTTALL, 25 T. L. R. 76; 53 Sol. Jo. 64—  
[C. C. A.]

**63. Reduction of Sentence—Burglary—Evidence of Receiving Only—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4.**—The prisoner was convicted on an indictment charging him

with burglary, larceny, and receiving, and sentenced to twelve months' imprisonment with hard labour. On an appeal from the conviction:

**HELD**—that as the evidence only justified a verdict of guilty on the count for receiving, the Court would reduce the sentence to six months, as it could not feel confident that the sentence of twelve months would have been imposed had the jury found the prisoner guilty of receiving only.

If at the close of the case for the prosecution the Judge considers that there is no evidence to go to the jury, he may, on his own initiative, stop the case, but, in the absence of a submission on behalf of the prisoner that the case ought not to go to the jury, he is not in law bound to stop it.

R. v. GEORGE, 25 T. L. R. 66—C. C. A.

**64. Review of Other Cases before Sentence—Reduction of Subsequent Sentence—Home Office Circular to Police Authorities dated the 20th of August, 1896.**—The appellant had had an account at a bank, which was closed, but he retained a cheque book, containing a number of blank cheques drawn on the bank. A number of these cheques he filled in and gave to tradesmen and others in return for goods. The appellant was prosecuted for obtaining goods by false pretences—one of these cheques—and sentenced to six months' imprisonment. Whilst serving this sentence he was brought to Cambridge and convicted of obtaining goods by false pretences on another of these cheques. The Recorder at Quarter Sessions, before sentencing him, asked that other charges might be mentioned to him, and the police mentioned a number of cases where he had obtained goods by false pretences, giving details as to six cases; but they did not mention two cases in the jurisdiction of the Kent Quarter Sessions. The Recorder sentenced him to twelve months' imprisonment, with hard labour, and expressed the view that at the end of his sentence he would start with a "clean sheet." Whilst serving that sentence he was brought up and charged with two similar cases at the Kent Quarter Sessions. What the Recorder at Cambridge had said was not mentioned to the Chairman at Maidstone, and he sentenced the appellant to three years' penal servitude, from which sentence he appealed.

The Court said that they did not lay down any general rule that in such a case where certain cases had not been mentioned on the earlier sentence, they could not be proceeded with. But in this case they thought that substantially the whole of the cases were before the Recorder of Cambridge. They, therefore, reduced the sentence of three years' penal servitude to one of twelve months' imprisonment with hard labour, to run concurrently with that passed on the appellant at Cambridge.

R. v. SYRES, 25 T. L. R. 71—C. C. A.

**65. Sentence of Death—Commutation by His Majesty—Appeal against Commuted Sentence.**—No appeal to the Court of Criminal Appeal lies against a sentence substituted by His Majesty on the recommendation of the Home



**Criminal Appeals—Continued.**

Secretary for the death sentence passed by the Court of trial.

R. v. LORD, 52 Sol. Jo. 740—C. C. A.

**66. Ticket-of-Leave—Term of Penal Servitude to Run Concurrently with Unexpired Portion—Penal Servitude Act, 1864 (27 & 28 Vict. c. 47), s. 4, and Sched. A.]**—The prisoner appealed against a sentence of three years' penal servitude to run concurrently with a period of 265 days, the unexpired portion of a sentence of penal servitude in respect of which the prisoner was on ticket-of-leave at the time of his trial. The Penal Servitude Act, 1864, enacts that where a ticket-of-leave is forfeited by a conviction the prisoner, after undergoing the sentence passed on his conviction, shall undergo a term of penal servitude equal to the term remitted under the ticket-of-leave.

**HELD**—that all that the Court could do would be to strike out the word "concurrent," which was not what the prisoner wanted; that to strike the 265 days off the sentence would reduce the term below the legal minimum of penal servitude, and the sentence of two years' imprisonment which would result would be, in the opinion of many, more severe than the present sentence, and the best thing to do was to leave the sentence as it was for the Home Secretary, if he thought fit, to remit the 265 days.

R. v. HAMILTON, 125 L. T. Jo. 338, *Times*, July 25th, 1908—[C. C. A.]

**(c) Appeal on Facts.**

**67. Alibi—Prisoner not Going into the Box.]**—An alibi is a most difficult defence when the accused does not himself give evidence.

R. v. MACK, *Times*, September 19th, 1908—[C. C. A.]

**68. Alibi—Set up at Trial—Fresh Witnesses not Mentioned at Trial.]**—The appellant made no defence before the magistrates, and at his trial set up an alibi, which the evidence he called did not support while other witnesses he named failed to appear. He now put forward names of persons to prove the alibi whom he had not mentioned at his trial.

**HELD**—that there was no ground for giving leave to appeal against the conviction.

R. v. WINKWORTH, *Times*, September 19th, 1908—[C. C. A.]

**69. Evidence for Jury—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4, sub-s. 1.]**—The Court refused leave to appeal against a conviction where there was evidence upon which the jury might properly have arrived at their verdict.

R. v. WILLIAMSON, 24 T. L. R. 619—C. C. A.

**69a. Inadmissibility of Evidence—No Substantial Miscarriage of Justice—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (1), Proviso.]**—A quarter-master sergeant appealed from a conviction for uttering a forged receipt. At the

trial evidence was admitted of his having been tried by court-martial, but his counsel had elucidated the fact that the verdict of the court-martial against him had been quashed by the Judge-Advocate-General, which fact was pointed out by the Judge in his summing up. No point was made by the prosecution or by the Judge that this verdict should be taken into consideration.

**HELD**—that, without deciding whether the evidence was inadmissible and assuming that it was inadmissible, the case came within the proviso to sect. 4 (1) of the Criminal Appeal Act, 1907, as no substantial miscarriage of justice had actually occurred.

R. v. WESTACOTT, *Times*, December 19th, 1908—[C. C. A.]

**70. Insufficient Evidence—Conviction Quashed.]**

O. was convicted with two others for stealing property from a chest of drawers situate in the downstairs room of a small house. Stairs led directly from this room to the upstairs room. The only evidence against O. was, that the prosecutrix said that when standing at the top of the stairs she saw him at the chest of drawers. The prosecutrix knew O. by sight, and subsequently pointed him out amongst a number of other men. The downstairs room was lighted. The police evidence, however, showed that a person at the top of the stairs could not see the whole of the chest of drawers unless he stooped right down. There was no evidence that the prosecutrix had stooped right down. The prosecutrix said that she had not given the name of the man to the police, but the police arrested O. on a description giving his name, and merely his height and age. O. appealed.

The Court allowed the appeal.

R. v. OSBORNE, 72 J. P. 473—C. C. A.

**71. Mistake as to Time of Trial—Principal Witness for Prosecution not sufficiently Cross-examined—Previous Convictions not affecting Truthfulness—Practice—Affidavit of Allegations.]**—At the hearing of an appeal against a conviction it appeared that, owing to a mistake as to the time of trial, counsel for the defence had not been instructed with a view to cross-examination of the principal witness for the prosecution. The cross-examination might have elicited that the witness had been convicted on various occasions of assault, of refusing to quit licensed premises, and of obscene language.

**HELD**—that, on the facts stated, which should however have been on affidavit, the witness had not been convicted of anything which would show him to be an untruthful witness, and that the appeal must be dismissed.

R. v. HAMPSHIRE, *Times*, November 30th, 1908—[C. C. A.]

**(d) Bail.**

**72. Application for—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 14, sub-s. 2.]**—Upon an application for leave to appeal against a conviction for larceny, which the Court granted, an



**Criminal Appeals—Continued.**

application was made for bail on behalf of the prisoner, who was not present in Court, and against whom there was a previous conviction, though not for felony. The Court said that a substantive application under the Criminal Appeal Act, 1907, must be made.

R. v. MEYER, 24 T. L. R. 620—C. C. A.

**(e) Fresh Evidence.**

**73. Application for Leave to Call — Practice—Names of Witnesses.**—If, on an application for leave to call further evidence at the hearing of an appeal, leave is to be granted to call witnesses, the Court must have the names of the witnesses at the time of the application.

R. v. LOVETT AND HIPPERSON, *Times*, July 31st, [1908—C. C. A.]

**74. Application for Leave to Call—Stating Evidence on Affidavit — Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 9 (b).**—Solicitor and counsel having been assigned to an appellant, and an application being made on his behalf for leave to call further witnesses, who had not been called at the trial, the Court said that in such a case the evidence of the suggested witnesses should be placed before the Court on affidavit.

R. v. ATKINS, 24 T. L. R. 807—C. C. A.

**75. Application for leave to Call — Appeal against Conviction and Sentence—Misdirection—Finding Property—Larceny—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), ss. 9 (b).**—The Court refused to allow further evidence to be called merely to supplement or support the case made at the trial, the witnesses having been available at the trial and not having been called. Upon an appeal against a conviction upon a charge of stealing a bag which had been delivered to the prisoner by mistake, the allegation being that the Chairman at Quarter Sessions, where the prisoner was tried, misdirected the jury in not having sufficiently explained to them the law as to what was necessary to constitute larceny in the case of property found by a person, the Court dismissed the appeal upon the ground that in view of the case set up at the trial, there had been no misdirection. The Quarter Sessions, having sentenced the prisoner to fifteen months' hard labour, subsequently altered it to one of fifteen months in the second division. The prisoner having appealed against the sentence, the Court, in the circumstances, restored the original sentence.

R. v. MORTIMER, 72 J. P. 349; 99 L. T. 204; 24 [T. L. R. 745—C. C. A.]

**76. Application for leave to Call—Reason for not Calling at Trial.**—Permission to call fresh witnesses at the hearing of an appeal is not granted unless some reason is given for their not having been called at the trial.

R. v. MARTIN, *Times*, July 4th, 1908—C. C. A.

**77. Order to Examine Witnesses—Calling other Witnesses—Criminal Appeal Act, 1907**

(7 Edw. 7, c. 23), s. 9 (b).—Where the Court of Criminal Appeal makes an order for certain witnesses to be examined before the Court, the appellant is not at liberty to call witnesses of his own not indicated by the Court.

R. v. LAWS, 72 J. P. 271; 24 T. L. R. 630— [C. C. A.]

**78. Witnesses not Called at the Trial—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 9 (b) (c).**—On a charge of attempted robbery, the prisoner at the trial set up an *alibi*. The jury convicted the prisoner, and the Judge who tried the case gave him leave to appeal. The appeal was on the simple question of fact, whether the prisoner was the man who committed the offence. It appeared from the *alibi* set up that the prisoner was seen by (amongst others) a constable at the place and time spoken of; but the defence did not call this constable, or call for the books of the police station to corroborate their testimony.

The Court of Appeal adjourned the case in order that the evidence of the police might be obtained on this matter under s. 9 (b), (c) of the Criminal Appeal Act, 1907, and on the police evidence corroborating the *alibi*, they allowed the appeal.

R. v. LAWS, 72 J. P. 271; 24 T. L. R. 630— [C. C. A.]

**(f) Insanity.**

See also No. 49, *supra*.

**79. Issue whether Fit to Plead—Defence of Insanity—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 5 (4).**

There is no appeal under the Criminal Appeal Act, 1907, against the verdict of a jury on an issue as to whether a prisoner is of sound mind and understanding so as to be capable of pleading and taking his trial.

J. was tried for a murder committed under circumstances pointing to insanity, and the jury found that the prisoner was then of sound mind and understanding so as to be capable of pleading and taking his trial. For the defence three doctors were called. The first, a doctor in an asylum, was of opinion that the prisoner was, at the time of committing the offence, insane; he knew he was killing a woman, but, in his opinion, the prisoner did not know he was doing wrong. The other two doctors were from the prison, where they had the prisoner under observation from May 6th to July 20th. In their opinion the prisoner knew that he was doing wrong, but he did not know how wrong, nor did he know the quality of the act or appreciate it. All three doctors were of opinion that the prisoner suffered from hallucinations and delusions. When in prison the prisoner had asked a warder, "Do you think I will get hung for it?" The prisoner was found guilty and sentenced to death. On appeal, after some argument, counsel for the Crown admitted he could not contend that the verdict was satisfactory.

**HELD**—that the verdict was unsatisfactory and that the sentence must be quashed. Order made under s. 5 (4) of the Criminal Appeal Act, 1907, that the appellant be kept in custody as a

**Criminal Appeals—Continued.**

criminal lunatic under the Trial of Lunatics Act, 1883, as if a special verdict had been found by the jury under that Act.

R. v. JEFFERSON, 72 J. P. 467; 24 T. L. R. 877  
[—C. C. A.]

**(g) Mistakes of Judge.**

**80. Misdirection as to Facts.**—One Wilkinson and the appellant C. were indicted for stealing certain property and receiving it well knowing it to have been stolen. W. pleaded guilty and C. not guilty. It appeared that C. when arrested was with a barrow on which was the stolen property. He told the detectives that he had obtained the property from Keeble, of 55, East Street. He had, in fact, obtained it from Wilkinson, of 55, East Street, and the defence was that he was innocently employed in carting the property at the instance of Wilkinson. Wilkinson was called for the prosecution and supported Coleman's defence. The Judge, in summing up to the jury, said: "Where is Mr. Keeble? Why does not Mr. Keeble come here and tell you all about it?" C. was convicted, but obtained leave to appeal. On the appeal he obtained leave to call Wilkinson, who said that he had married a widow named Keeble, and was known to C. as "Sculler Keeble."

The Court said that they believed this evidence, and as they could not say the verdict would have stood if the mistake had not been made, they allowed the appeal.

R. v. COLEMAN, 72 J. P. 425; 24 T. L. R. 798—  
[C. C. A.]

**81. Misdirection as to Facts — Ambiguous Phrase treated as a Confession.**—In a case where a prisoner was convicted of stealing £3 8s. from the person, a detective gave evidence at the trial that he said to the prisoner when charged: "Do you care to tell me where you have put the money?" The prisoner said "I have got no money." The detective told him that he was going to his lodgings, and the prisoner then said "You will find £1 7s. 6d. in my box; my girl has got the key." The Judge who tried the case in summing up said, "Subsequently, however, he (the prisoner) said, 'I may as well tell you that I have £1 7s. 6d.' I suppose he meant 'still remaining.'" The Judge also said "Now, that statement of the prisoner's as to the remainder of the money being in his box, coupled with the prosecutor's tale, can only point in one direction." He also said, "When he wrote that letter (a statement of his defence to the magistrate) he apparently quite forgot that he had told the officer that he had the £1 7s. 6d. left of the money he took from the prosecutor." In another passage the Judge spoke of the £1 7s. 6d. as "belonging to Eglington" (the prosecutor).

The Court of Criminal Appeal allowed the appeal, and quashed the conviction on the ground that the Judge who tried the case had misdirected the jury by treating the prisoner's statement to the detective as a confession, when it was consistent with his being not guilty.

R. v. JOYCE, 72 J. P. 483; 25 T. L. R. 8—  
[C. C. A.]

**82. Mistakes as to Evidence in Summing up — Conviction Quashed.**—A man, woman, and child entered a shop of one Lewis on March 27th, and having been shown some boots went away. Very shortly afterwards, on the same day, Lewis found a pair of ladies' shoes were missing. Three months later Lewis picked out S. from amongst eight other men of similar appearance at a police station, as the man who had entered his shop on March 27th, but said that on March 27th S. had a slight moustache and now he was clean shaven. On the trial of S. for stealing the ladies' shoes these facts were proved, and a detective stated, in answer to the Judge who tried the case, that the wife of S. had been convicted of stealing these shoes. The defence was that S. had quarrelled with his wife, and that on March 27th she was going about with another man, and several witnesses were called to prove that S. had a good character, and that he never wore a moustache. The prosecution then proved that in August, 1906, S. was in prison on a conviction for unlawful wounding, and that when there a photograph was taken of him. This photograph was produced and it showed that at that time S. was wearing a slight moustache.

In the course of summing up the case to the jury the Judge repeated the statement of the detective, that the wife of S. had been convicted of stealing these shoes. He also stated that S. was "identified at once by the prosecutors, who said: 'Oh yes, that is the man.'" He also said: "Then Mrs. Young identified him also." The only person who in fact identified S. was Lewis, and there was no Mrs. Young at all in the case. S. was convicted, but appealed.

Counsel for the appellant stated that the conviction of the wife was not for this offence at all, but for another offence some six weeks later, and this statement was uncontradicted by counsel for the Crown.

The Court allowed the appeal and quashed the conviction on the ground that the Judge had, in his summing up, stated that matters were proved which in fact were not proved, and they could not say that the inaccurate statements made were not prejudicial to the appellant.

R. v. SOVOSKI, 72 J. P. 435—C. C. A.

**83. Misdirection as to Law—No Leave Necessary—Misdirection not Substantial—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (1).**—Misdirection is a question of law, and no leave to appeal on that ground is necessary.

Misdirection must depend upon the evidence given at the trial, and the lines upon which the case is conducted there.

The Court will not interfere where the misdirection is not substantial and results in no miscarriage of justice.

R. v. MEYER, 99 L. T. 203; 24 T. L. R. 620—  
[C. C. A.]

**84. Misdirection as to Law—"No Substantial Miscarriage of Justice"—Power of Court to find Facts in order to Sustain Conviction—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (1).**—By the proviso to sect. 4 (1) of the Criminal Appeal Act, 1907, the Court of Criminal Appeal, notwithstanding that they are of opinion that



**Criminal Appeals—Continued.**

the point raised in the appeal might be decided in favour of the appellant, may dismiss the appeal, if they consider that no substantial miscarriage of justice has actually occurred.

In a case where the jury were misdirected by a Judge, but the Court of Criminal Appeal were of opinion, on consideration of the evidence given at the trial, that even had they been properly directed the jury would in all probability have convicted the prisoner, the Court nevertheless refused to act under this proviso, on the ground that they were unable to say certainly that the jury must have convicted.

The Court expressed their regret that they had no power to order a new trial.

R. v. DYSON, [1908] 2 K. B. 454; 72 J. P. 303; [99 L. T. 201; 24 T. L. R. 653—C. C. A.]

**85. Omission—Evidence of Previous Imprisonment—Omission by Judge to tell Jury to disregard Previous Imprisonment—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23).**—On an appeal against the verdict of a jury convicting a prisoner of having feloniously uttered a counterfeit coin where the only evidence of guilty knowledge was the fact that the prisoner had run away when followed by a policeman and where the prisoner had proved conclusively that he had not uttered another counterfeit coin to the same person a fortnight before—as was alleged—for he was in prison at the time, the Court allowed the appeal on the ground that the judge had not expressly warned the jury that they must disregard the fact that the prisoner had been in prison before.

R. v. LEE, 72 J. P. 253; 24 T. L. R. 627; 52 Sol. [Jo. 518—C. C. A.]

**86. Omission—No Mention in Summing Up of Defence raised by Prisoner—No Miscarriage—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4, sub-s. 1.**—The prisoner was convicted of murder. At the trial the Judge in his summing up omitted all mention of the defence raised on behalf of the prisoner.

HELD—that as it could not be said on the facts that if the attention of the jury had been directed to the defence by the Judge the result of the trial would have been and ought to have been different, the omission to refer to the defence had not led to a miscarriage of justice.

In determining whether there has been a miscarriage of justice, the Court may consider what the appellant has said in his notice of appeal, although it may not be entitled to consider what is stated therein in determining whether the verdict is unreasonable or cannot be supported having regard to the evidence.

R. v. NICHOLLS, 25 T. L. R. 65—C. C. A.

**87. Omission to Warn Jury—Statement Affecting Prisoner—Prisoner's Explanation Interrupted—Danger of Miscarriage of Justice.**—A prisoner was indicted for larceny. A witness made some statement connecting the prisoner with a counterfeiting transaction. The prisoner attempted by cross-examination and by evidence to explain this reference, but on each occasion

was stopped by the Chairman. The latter, however, did not explain to the jury that he had so stopped the prisoner merely because the matter introduced by the witness in question was quite irrelevant and ought to be disregarded.

HELD—that the incident might have influenced the verdict, and that the prisoner's appeal should be allowed.

R. v. LEE (*supra*) discussed.

R. v. WARNER, 25 T. L. R. 142—C. C. A.

**(h) Practice.**

**88. Applications under sect. 17 of the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23)—Application to Court.**—Where an application under sect. 17 of the Criminal Appeal Act, 1907, is made to a Judge of the Court of Criminal Appeal, he can, in his discretion, refer the application to the Court. It is better that such application should come before the Court.

R. v. MUNN, 24 T. L. R. 627—C. C. A.

**89. Appeal Dismissed—Sentence of Imprisonment in Second Division—Special Treatment pending Appeal—No Ground for Sentence Running from Conviction.**—An appellant to the Court of Criminal Appeal, who has been sentenced to imprisonment in the second division, receives special treatment pending the hearing of his appeal. Therefore, if his appeal is unsuccessful, the fact that he has been sentenced to the second division is in itself no ground for asking that his sentence should run from the date of conviction instead of from the date of the dismissal of the appeal.

R. v. GYLEE, *Times*, December 14th, 1908.—[C. C. A.]

**90. Appeal on Question of Fact—Right of Prisoner to be Present—Prisoner Ill—Waiver by Counsel—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 11 (1).**—On an appeal involving questions of fact an appellant is entitled to be present, if he desires to be, and his counsel cannot waive the right, *e.g.*, when the prisoner is ill.

R. v. DUNLEAVEY, [1908] W. N. 245—C. C. A.

**91. Appeal Successful—Other Indictments on File—Detention in Custody.**—A person convicted of stealing boots appealed successfully, but it appeared that there were two other indictments found by the grand jury against him at the same Sessions for similar offences which had not been tried.

The Court refused an application for the appellant's release and made the following order: "That the appellant be remanded in custody to Brixton Prison till he be taken in due course to the North London Sessions to take his trial upon any other indictment or indictments that have been found against him by the grand jury, or until he be otherwise lawfully discharged from the same."

R. v. SOVOSKI, 72 J. P. 435—C. C. A.

See also Nos. 60, 83, *supra*.

**(i) Rogues and Vagabonds.**

**92. Conviction at Petty Sessions as Rogue and Vagabond—Committed to Quarter Sessions as an**



**Criminal Appeals—Continued.**

*Incorrigible Rogue—Sentence at Quarter Sessions—Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 5—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 20 (2).—*No appeal lies to the Court of Criminal Appeal under sect. 20 (2) of the Criminal Appeal Act, 1907, from a conviction of a person as a rogue and vagabond at Petty Sessions, where he is committed with hard labour until the next General or Quarter Sessions of the Peace as an incorrigible rogue under sect. 5 of the Vagrancy Act, 1824, and is there sentenced to imprisonment with hard labour; although an appeal does lie under that section (with leave) against the sentence imposed by Quarter Sessions.

R. v. BROWN, 72 J. P. 427—C. C. A.

**CROPS.**

See AGRICULTURE; LANDLORD AND TENANT.

**CROSSED CHEQUES.**

See BANKERS.

**CROWN.**

See CROWN PRACTICE; DEPENDENCIES AND COLONIES.

**CROWN DEBT.**

See BANKRUPTCY; DEPENDENCIES AND COLONIES.

**CROWN PRACTICE.**

	COL.
I. CIVIL PROCEEDINGS AGAINST CROWN AND CROWN SERVANTS . . .	157
II. CROWN RIGHTS . . .	157
[No paragraphs in this vol. of the Digest.]	
III. CERTIORARI . . .	158
IV. HABEAS CORPUS . . .	158
[No paragraphs in this vol. of the Digest.]	
V. MANDAMUS . . .	158

See also DEPENDENCIES AND COLONIES; LOCAL GOVERNMENT, No. 14; MAGISTRATES.

**I. CIVIL PROCEEDINGS AGAINST CROWN AND CROWN SERVANTS.**

See CONTRACT, No. 2A.

**II. CROWN RIGHTS.**

[No paragraphs in this vol. of the Digest.]

**III. CERTIORARI.**

1. *Justices—Erroneous Finding of Fact—Wrongful Assumption of Jurisdiction.*—A Court of limited jurisdiction cannot give itself jurisdiction by wrongfully deciding some question of fact which arises as a preliminary question; *secus* if the question is not a preliminary one.

R. v. BRADFORD, [1908] 1 K. B. 365; 72 J. P. [61—Div. Ct.]

**IV. HABEAS CORPUS.**

[No paragraphs in this vol. of the Digest.]

**V. MANDAMUS.**

2. *Election Commissioner—Local Government Election.*—*Quere*, whether, *mandamus* lies in a commissioner appointed to try a local government election petition.

When he states a case for the opinion of the Court he will not be ordered to determine particular questions of fact, or to amend the case by including his decision on any particular facts.

IN RE PEMBROKE ELECTION PETITION, [1908] [2 I. R. 433—K. B. D.]

3. *Other Remedy Available—Equally Beneficial and Appropriate.*—A *mandamus* will not be granted when another remedy is available, equally beneficial and appropriate.

R. v. BERMONDSEY BOROUGH COUNCIL, 72 [J. P. 330; 99 L. T. 14; 6 L. G. R. 852—Div. Ct.]

**CRUELTY TO ANIMALS.**

See ANIMALS.

**CRUELTY TO CHILDREN.**

See CRIMINAL LAW AND PROCEDURE.

**CUSTOM OF THE COUNTRY.**

See AGRICULTURE.

**CUSTOMS AND USAGES.**

See AGENCY; BANKERS; BANKRUPTCY; BILLS OF EXCHANGE; BUILDERS, ETC.; CARRIERS; STOCK EXCHANGE; TRADE.

**CUSTOMS DUTIES.**

See REVENUE.

**CY PRÈS DOCTRINE.**

See CHARITIES; WILLS.

**DAIRIES AND COWSHEDS.**

See PUBLIC HEALTH.

**DAMAGES.**

COL.

**I. CLASSIFICATION OF DAMAGES.**

- (a) General or Nominal . . . 159  
[No paragraphs in this vol. of the Digest.]
- (b) Penalty or Liquidated . . . 159  
[No paragraphs in this vol. of the Digest.]
- (c) Consequential . . . 159  
[No paragraphs in this vol. of the Digest.]

**II. MEASURE OF DAMAGES . . . 159****III. WHEN DAMAGES CANNOT BE RECOVERED . . . 160****IV. ASSESSMENT . . . 160**  
[No paragraphs in this vol. of the Digest.]

See also BANKERS AND BANKING;  
BANKRUPTCY AND INSOLVENCY;  
BUILDERS' CONTRACT; ELECTRIC  
LIGHTING, No. 2; EXECUTORS,  
No. 25; HIGHWAYS, No. 12; LIBEL  
AND SLANDER, No. 3; MASTER AND  
SERVANT; PATENTS, No. 6; SALE  
OF GOODS; SHIPPING AND NAVIGA-  
TION, XI. (c); TELEGRAPHS, No. 5.

**I. CLASSIFICATION OF DAMAGES.**

- (a) General or Nominal.  
[No paragraphs in this vol. of the Digest.]
- (b) Penalty or Liquidated.  
[No paragraphs in this vol. of the Digest.]
- (c) Consequential.  
[No paragraphs in this vol. of the Digest.]

**II. MEASURE OF DAMAGES.**

1. *Subsidence—Risk of Further Subsidence—Depreciation in Value of Land.*—Where damage to land and buildings has been caused by the working of the minerals underneath, in assessing the damages recoverable from the mineral owner the depreciation in the market value of the land and buildings attributable to the apprehension of further subsidence caused by the past working cannot be taken into account. Such further subsidence, if and when it occurs, gives a fresh cause of action to the surface owner.

In an action for damages for injury to cotton mills arising from subsidence occasioned by the past working of coal mines underneath the site of the mills, both parties consented to judgment directing an inquiry to ascertain the amount of the damages, which inquiry was referred, pursuant to sect. 13 of the Arbitration Act, 1889, to an official referee who assessed the necessary

repairs at a certain amount, and the depreciation of the premises, including the risk of future damages, at a further amount, which latter amount the colliery owners disputed on the ground that the official referee, in estimating that amount, had taken into consideration the risk of future damage.

HELD—that he ought not to have done so.

Decision of C. A. ([1906] 2 Ch. 22; 75 L. J. Ch. 512; 94 L. T. 715; 22 T. L. R. 521) reversed.

WEST LEIGH COLLIERY CO., LD., v. TUNNI-  
[CLIFFE AND HAMPSON, LD., [1908] A. C. 27;  
77 L. J. Ch. 102; 98 L. T. 4; 24 T. L. R. 146  
—H. L.

**III. WHEN DAMAGES CANNOT BE RECOVERED.**

2. *Remoteness — Harbours and Docks — Obstructing Entrance to Dock—Damage to Dock Gates—Negligence of Defendants—Delay caused to Plaintiffs' Ship in Loading.*—By the negligence of those in charge of the defendants' vessel when passing through the lock of the South Alexandra Dock at Cardiff, the dock gates were damaged. Notwithstanding the damage the gates were opened and used on the three following days. On the fourth day after the damage it was found necessary to close the gates for repairs, and they were kept closed for three days. The plaintiffs' vessel arrived when the gates were closed, for the purpose of entering the Alexandra Dock to load cargo which was there ready for loading, but in consequence of the gates being closed the vessel was kept waiting outside the dock for more than two days. There was no other dock where the plaintiffs' vessel could have loaded the cargo. All vessels upon payment of the dock rates had a statutory right to enter the dock. In an action against the defendants to recover damages for the delay thereby caused:—

HELD—that the negligent act of the defendants was too indirectly the cause of the plaintiffs' loss to sustain an action.

THE ANGLO-ALGERIAN STEAMSHIP CO. (1896),  
[LD., v. THE HOULDER LINE, LD., [1908]  
1 K. B. 659; 77 L. J. K. B. 187; 98 L. T.  
440; 24 T. L. R. 235; 13 Com. Cas. 187—  
Walton, J.

**IV. ASSESSMENT.**

[No paragraphs in this vol. of the Digest.]

**DANCING.**

See THEATRES, ETC.

**DEAD FREIGHT.**

See SHIPPING AND NAVIGATION.

## DEATH DUTIES.

I. ESTATE DUTY . . . . .	COL. 161
II. LEGACY DUTY . . . . .	164
[No paragraphs in this vol. of the Digest.]	
III. PROBATE DUTY . . . . .	164
[No paragraphs in this vol. of the Digest.]	
IV. SUCCESSION DUTY . . . . .	164
And see LUNATICS; WILLS.	

## I. ESTATE DUTY.

1. *Foreign Bearer Bonds—Bonds actually in United Kingdom—Marketable Securities—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 1, 2, sub-s. 2.*—Foreign bonds payable to bearer and marketable on the London Stock Exchange, if actually in England at the time of the owner's death, are liable to estate duty, although he was not a domiciled Englishman.

*Attorney-General v. Glendinning* ((1904), 92 L. T. 87—Phillimore, J.), and *Attorney-General v. Bouwens* ((1838), 4 M. and W. 171) followed.

Decision of Bray, J. (23 T. L. R. 705) affirmed.

*WINANS' v. R.*, [1908] 1 K. B. 1022; 77 L. J. [K. B. 565; 98 L. T. 602; 24 T. L. R. 445; 52 Sol. Jo. 378—C. A.

2. *Incidence of Duty—Direction to Pay Legacies out of a Mixed Fund—To be Paid Rateably—Testamentary Expenses—Estate Duty on Portion Attributable to Realty—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 6, sub-s. 2, s. 8, sub-ss. 3, 4.*—A testator directed his trustees to sell and convert his residuary real and personal estate, and to pay out of the proceeds his funeral and testamentary expenses and debts and the legacies bequeathed by the will.

**HELD**—that such a direction to pay legacies out of a mixed fund of residue charged them rateably on the portions representing realty and personality.

*Roberts v. Walkers* ((1830), 1 Russ. & My. 752) applied.

And that, notwithstanding the direction as to payment of testamentary expense, the portion of the legacies attributable to realty must bear the estate duty payable in respect of them.

*In re Trenchard* ([1905] 1 Ch. 82; 74 L. J. Ch. 135; 92 L. T. 265; 53 W. R. 235—Warrington, J.) distinguished.

*Smith v. Claxton* ((1820), 4 Madd. 484) and *Berry v. Gaukroger* ([1903] 2 Ch. 115; 72 L. J. Ch. 435; 88 L. T. 521; 51 W. R. 449; 19 R. R. 445—C. A.) applied.

**IN RE SPENCER COOPER; POË v. SPENCER** [COOPER, [1908] 1 Ch. 130; 77 L. J. Ch. 64; 98 L. T. 344—Eady, J.

3. *Incidence of Duty—Exoneration of Real Estate—Estate Duty—Whether an "Equitable Charge"—Real Estate Charges Act, 1877 (40 & 41 Vict. c. 34)—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 2, sub-s. 1.*—  
Y.D.

Estate duty is an "equitable charge," within the Real Estate Charges Act, 1877.

In 1904 B. became entitled to land upon an intestacy, and himself died intestate without having paid the estate duty payable on his predecessor's death.

**HELD**—that his heir-at-law could not claim to have the land exonerated by the predecessor's personality.

**IN RE BOWERMAN, PORTER v. BOWERMAN** [[1908] 2 Ch. 340; 77 L. J. Ch. 594; 99 L. T. 7—Joyce, J.

4. *Incidence of Duty—General Power of Appointment—Residue—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 9, sub-s. 1.*—Where a general power of appointment over a fund is exercised by will, the estate duty in respect thereof is payable out of the testator's general personal estate, and not out of the fund.

*In re Moore* ([1901] 1 Ch. 691; 70 L. J. Ch. 321; 149 W. R. 373—Buckley, J.) and *In re Fearnside* ([1903] 1 Ch. 250; 72 L. J. Ch. 200; 51 W. R. 186; 88 L. T. 57; 19 T. L. R. 104—Eady, J.) followed. *In re Treasure* ([1900] 2 Ch. 648; 69 L. J. Ch. 757; 83 L. T. 142; 48 W. R. 696; 16 T. L. R. 542—Kekewich, J.), *In re Power* ([1901] 2 Ch. 659; 70 L. J. Ch. 778; 85 L. T. 400; 49 W. R. 678; 17 T. L. R. 709—Byrne, J.), and *In re Dodson* ([1907] 1 Ch. 284; 76 L. J. Ch. 182; 96 L. T. 254—Warrington, J.) not followed.

**IN RE ORLEBAR, WYNTER v. ORLEBAR**, [1908] 1 Ch. 136; 77 L. J. Ch. 54; 98 L. T. 19; 24 T. L. R. 42—Neville, J.

5. *Incidence of Duty—General Power of Appointment—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 9, sub-s. 1.*—Where a general power of appointment over a fund is exercised by will, the appointed fund passes to the executor "as such" within the meaning of sect. 9, sub-sect. 1, of the Finance Act, 1894, and the estate duty payable in respect thereof is not a charge on that fund but is payable out of the testator's personality.

*In re Treasure* ([1900] 2 Ch. 648; 69 L. J. Ch. 757; 83 L. T. 142; 48 W. R. 696; 16 T. L. R. 542—Kekewich, J.), *In re Power* ([1901] 2 Ch. 659; 70 L. J. Ch. 778; 85 L. T. 400; 49 W. R. 678; 17 T. L. R. 709—Byrne, J.), and *In re Dodson* ([1907] 1 Ch. 284; 76 L. J. Ch. 182; 96 L. T. 254—Warrington, J.) not followed. *In re Moore* ([1901] 1 Ch. 691; 70 L. J. Ch. 321; 49 W. R. 373—Buckley, J.), *In re Fearnside* ([1903] 1 Ch. 250; 72 L. J. Ch. 200; 51 W. R. 186; 88 L. T. 57; 19 T. L. R. 104—Eady, J.) and *In re Orlebar* (*supra*) followed.

Decision of Parker, J. (77 L. J. Ch. 669; 24 T. L. R. 773; 99 L. T. 296; 52 Sol. Jo. 640) reversed.

**IN RE HADLEY**, 25 T. L. R. 11; 53 Sol. Jo. 46; [1908] W. N. 220—C. A.

6. *Incidence of Duty—Settlement of Real Estate—Trust for Conversion—Failure of Object—Devise—Incidence of Estate Duty.*—By his



**Estate Duty—Continued.**

marriage settlement a nobleman conveyed his real estate to trustees upon trust for himself for life and after his death upon trust for sale and to hold the proceeds of conversion upon certain trusts in favour of his wife and children, with an ultimate trust, in default of issue, to himself absolutely. The settlor's wife predeceased him, and he died without issue, having devised the real estate to the defendant.

**HELD**—that as the real estate could not be sold until after the settlor's death, and as after his death there was no enforceable trust for sale—the property being “at home,”—it devolved as realty and the devisee must bear the estate duty payable in respect of it.

Decision of Eve, J. ([1908] 1 Ch. 666; 77 L. J. Ch. 321; 98 L. T. 634; 24 T. L. R. 356) affirmed on other grounds.

**IN RE LORD GRIMTHORPE, BECKETT v. [GRIMTHORPE, [1908] 2 Ch. 675; 25 T. L. R. [15—C. A.]**

**7. Incidence of Duty—Specific Devise of Colonial Property—Direction to pay “Debts” out of Residue—Colonial Death Duty “deemed to be a Debt” by Local Law—Whether a Debt for Purposes of Will.**—By Victorian law the death duty on property there is to be “deemed to be a debt” of the deceased. By her will B., domiciled in England, specifically devised land in Victoria to “Colonial trustees” upon trust to sell and pay the proceeds to “English trustees,” to be held on certain trusts. She gave the rest of her property to her “English trustees” upon trust to sell and pay her “debts” out of the proceeds and hold the balance on certain other trusts.

**HELD**—that the property in Victoria must bear the expenses of realisation and the Colonial death duty.

*In re Maurice* ((1896), 75 L. T. 415—North, J.) distinguished.

**IN RE BREWSTER, BUTLER v. SOUTHAM, [1908] 2 Ch. 365; 77 L. J. Ch. 605; 99 L. T. [517—Eady, J.]**

**8. Value of Property — “Incumbrance Incurred or Created bona fide” — “Full Consideration in Money or Money's Worth” — “Wholly for the Deceased's Own Use and Benefit” — Finance Act, 1894 (57 & 58 Vict. c. 30), s. 7, sub-s. 1 (a).**—In considering whether an incumbrance was created *bona fide* within the meaning of sect. 7, sub-sect. 1 (a) of the Finance Act, 1894, the motive with which the incumbrance was created is immaterial. In coming to a conclusion as to whether deeds were real and not sham deeds intended to have a real operation and creating real incumbrances, one of the elements for consideration may be motive; but once it is found that the incumbrances were real, intended to have full operation without any secret or covinous arrangement or reservation, the motive—*e.g.*, to evade payment of estate duty—is immaterial.

The words in sect. 7, sub-sect. 1 (a) of the Act —“for full consideration in money or money's worth wholly for the deceased's own use and

benefit”—are satisfied by a tenant for life barring the entail of a Scottish estate and acquiring the fee simple, and giving a charge on the estate to the nearest heir, so long as he acquires the fee simple so that he can do what he pleases with it, and it is immaterial that he means to resettle it.

Decision of Bray, J. ([1907] 2 K. B. 923; 77 L. J. K. B. 38; 97 L. T. 802; 23 T. L. R. 739) affirmed.

**ATTORNEY-GENERAL v. DUKE OF RICHMOND [No. 1], [1908] 2 K. B. 729; 99 L. T. 534; 24 T. L. R. 758—C. A.]**

**9. Value of Property—Estate and Succession Duty—Property Situate Abroad—English Will—Trust for Conversion—Liability to Duty.**—A testator domiciled in England gave the residue of his estate, including a tea estate in Assam, to trustees in trust to convert it into money and invest the proceeds, and out of the income thereof to pay certain life annuities, and subject thereto and until the death of the last surviving annuitant to pay the surplus income to certain persons in equal shares and to the survivors or survivor of them. The will contained no gift over either of the income or of the corpus upon the death either of the last surviving annuitant or of the last surviving person entitled to the surplus income. The trustees were authorised by the will to work the tea estate until it was sold, and also to postpone the sale and conversion of any part of the estate as long they think it desirable, and in the meantime the annual produce of the unconverted part was to be applied in the same manner as if it were income arising from the proceeds of conversion. The trustees were resident in England, and the will was proved in England. The trustees postponed the sale of the tea estate, and while it still remained unsold two of the persons entitled to shares of the surplus income died.

**HELD**—that the amount by which the survivors' shares of the surplus income was thus increased was not, even so far as that increase was attributable to the profits of the tea estate, property situate out of the United Kingdom, and that succession duty, estate duty, and settlement estate duty were payable in respect of the increase so attributable to the tea estate.

**ATTORNEY-GENERAL v. JOHNSON, [1907] 2 [K. B. 885; 76 L. J. K. B. 1150; 97 L. T. 720 —Bray, J.]**

**II. LEGACY DUTY.**

[No paragraphs in this vol. of the Digest.]

**III. PROBATE DUTY.**

[No paragraphs in this vol. of the Digest.]

**IV. SUCCESSION DUTY.**

**10. Entailed Land in Scotland — Propulsion of Fee by Disentail—Acceleration of Succession —Heir Liable for Succession Duty—Succession Duty Act, 1853 (16 & 17 Vict. c. 57), s. 15.**—In 1872 B., heir of entail in possession of Scotch estates entailed prior to 1848, executed a disposition of the entailed estates in favour of his son C., the heir apparent, who was under twenty-

**Succession Duty—Continued.**

five. In 1875 C., having attained twenty-five, joined B. in obtaining from the Court a disentail.

B. died in 1898, and in 1906 the Inland Revenue claimed succession duty from C. in respect of his succession to the entailed estates.

HELD—that C. was liable.

Decision of Ct. of Sess. ([1907] S. C. 849) affirmed.

EARL OF BUCHAN *v.* LORD ADVOCATE, [1908]  
[W. N. 241; 25 T. L. R. 134; 53 Sol. Jo. 116  
—H. L.]

**DEATH, PRESUMPTION OF.**

See EXECUTORS, Nos. 13, 14; EVIDENCE.

**DEBENTURES.**

See COMPANIES.

**DEBTORS ACT, 1869.**

See BANKRUPTCY AND INSOLVENCY;  
CRIMINAL LAW, Nos. 9, 40; IN-  
JUNCTIONS, No. 1.

**DECEIT.**

See MISREPRESENTATION AND FRAUD.

**DECLARATIONS.**

See EVIDENCE.

**DEEDS AND OTHER INSTRUMENTS.**

See also CONTRACT; EQUITY; EVIDENCE; LANDLORD AND TENANT; MISREPRESENTATION AND FRAUD; POWERS; PRACTICE AND PROCEDURE.

1. *Deed of Family Arrangement—Construction—Vesting—Condition Precedent.*—By a clause in a deed of family arrangement it was expressly declared that no person being a party thereto of the fifth part should be entitled to any annuity, legacy, charge or advantage unless he or she being of full age should actually execute the deed within three months, or, being within the age of twenty-one years, within one month after attaining that age. R., one of the parties of the fifth part, subsequently attained the age of twenty-one but was of unsound mind. R.

would have been entitled to £300 if he had been able to execute the deed.

HELD—that the condition was a condition precedent and that R. was not entitled to the £300.

HOLLAND *v.* HOLLAND, 125 L. T. Jo. 85—  
[Eady, J.]

2. *Plea of non est factum—Essential Error—Alteration of Approved Draft—Signature of Contract in Ignorance of Alteration.*—S. executed a deed, believing it to be in all material respects identical with a draft already approved by him; in fact a clause had been materially altered.

HELD—that, as he was under no error as to the nature of the deed when he signed it, and as his erroneous belief was not induced by the other contracting party, he was bound by his signature.

SELKIRK *v.* FERGUSON, [1908] S. C. 26—Ct. of  
[Sess.]

3. *Plea of Non est Factum—Deed Executed in Ignorance of Nature—Right of Innocent Third Party.*—Miss C. executed what she had since ascertained to be two deeds of conveyance to O., her fiancé, who had obtained a great influence over her. Subsequently O. mortgaged the properties in question to the plaintiffs, having lodged with them the title deeds which he had stolen from Miss C. O. was convicted for the offence. Miss C. said that she did not believe or suspect that the deeds she signed related to the mortgaged property. There was no evidence of any express misrepresentation by O.

HELD—that it would be extending the law laid down in *Howatson v. Webb* (*infra*) to a dangerous extent to hold that a person of intelligence and mature years who signed deeds without asking what they were could come to the Court and defeat the rights of third parties who had innocently and in good faith acted on them, and that the mere fact that Miss C. said she thought she was only signing a settlement was not sufficient to bring the case within *Howatson v. Webb*.

ALLIANCE CREDIT BANK OF LONDON *v.* OWEN  
[Times, May 27th, 1908—Eve, J.]

4. *Plea of Non est Factum—Misrepresentation—Right to Repudiate—Mortgage—Divisibility of Instrument.*—If a person knows that a deed which he is executing deals with a particular property, he cannot afterwards repudiate it on the ground that misrepresentations were made to him as to the way in which the deed dealt with that property.

*Quare*, indeed, whether the old cases on misrepresentation as to the contents of a deed ought to be applied except in cases of blindness or illiteracy.

The defendant acted as nominee of one H., to whom he was managing clerk, in respect of a certain building estate at E. On his leaving H.'s service, the latter asked him to execute certain deeds, saying that they were deeds transferring

**Deeds and other Instruments—Continued.**

the E. estate to himself; in fact, one of them was a mortgage from the defendant to W., and contained the usual covenant to pay principal and interest. To an action by W.'s assignee, the defendant pleaded that the deed was not his deed by reason of the misrepresentation as to its contents.

HELD—that he was liable on the covenant.

Observations of Eady, J., in *Bagot v. Chapman* ([1907] 2 Ch. 223; 76 L. J. Ch. 523; 23 T. L. R. 562) as to the divisibility of a mortgage deed doubted.

Decision of Warrington, J. ([1907] 1 Ch. 537; 76 L. J. Ch. 346) affirmed.

HOWATSON *v.* WEBB, [1908] 1 Ch. 1; 77 [L. J. Ch. 32; 97 L. T. 730.—C. A.

**DEED OF ARRANGEMENT.**

See BANKRUPTCY AND INSOLVENCY.

**DEED OF ASSIGNMENT.**

See CHOSSES IN ACTION.

**DEFAMATION.**

See LIBEL AND SLANDER.

**DEMURRAGE.**

See SHIPPING AND NAVIGATION.

**DENTISTS.**

See MEDICINE.

**DEPENDENCIES, COLONIES, AND INDIA.**

I. ADEN . . . . .	COL.
[No paragraphs in this vol. of the Digest.]	168
II. AUSTRALIA.	
(a) Commonwealth . . . . .	168
(b) New South Wales . . . . .	168
(c) Queensland . . . . .	170
[No paragraphs in this vol. of the Digest.]	
(d) South Australia . . . . .	170
(e) Victoria . . . . .	170
[No paragraphs in this vol. of the Digest.]	
(f) Western Australia . . . . .	171

III. BRITISH SOUTH AFRICA.	COL.
(a) Bechuanaland . . . . .	171
[No paragraphs in this vol. of the Digest.]	
(b) Cape Colony . . . . .	171
(c) Natal . . . . .	171
[No paragraphs in this vol. of the Digest.]	
(d) Transvaal Colony . . . . .	171
IV. CANADA.	
(a) Dominion generally . . . . .	172
(b) British Columbia . . . . .	173
(c) Lower Canada . . . . .	174
[No paragraphs in this vol. of the Digest.]	
(d) Manitoba . . . . .	174
[No paragraphs in this vol. of the Digest.]	
(e) Ontario . . . . .	174
(f) Quebec . . . . .	176
V. CEYLON . . . . .	177
[No paragraphs in this vol. of the Digest.]	
VI. CHANNEL ISLANDS . . . . .	177
[No paragraphs in this vol. of the Digest.]	
VII. GIBRALTAR . . . . .	177
[No paragraphs in this vol. of the Digest.]	
VIII. HONG KONG . . . . .	177
[No paragraphs in this vol. of the Digest.]	
IX. JAMAICA . . . . .	177
[No paragraphs in this vol. of the Digest.]	
IXB. MALTA . . . . .	177
IXc. MAURITIUS . . . . .	177
X. NEWFOUNDLAND . . . . .	178
XI. NEW ZEALAND . . . . .	179
XII. SHANGHAI . . . . .	179
[No paragraphs in this vol. of the Digest.]	
XIII. SIERRA LEONE . . . . .	179
[No paragraphs in this vol. of the Digest.]	
XIV. TRINIDAD . . . . .	179
[No paragraphs in this vol. of the Digest.]	
XV. ZANZIBAR . . . . .	179
[No paragraphs in this vol. of the Digest.]	
XVI. INDIA . . . . .	179

And see COMPANIES; COURTS; EXECUTORS; PRACTICE (APPEALS); and VARIOUS HEADINGS.

**I. ADEN.**

[No paragraphs in this vol. of the Digest.]

**II. AUSTRALIA.****(a) Commonwealth.**

1. *Appeal—Appeal from Single Judge of State Court.*—An appeal lies to the Australian High Court from a single Judge of a State Supreme Court sitting in chambers or in Court.

BLAKE *v.* BAYNE, [1908] A. C. 371; 99 L. T. 35 [—P. C.]

**(b) New South Wales.**

2. *Crown Debt—Policy of Life Insurance—Maintenance of Insane Patient—Life, Fire, and*



**Australia—Continued.**

*Marine Insurance Act, 1902* (Act No. 49 of 1902), s. 4.]—Sect. 4 of the Life, Fire, and Marine Insurance Act, 1902, which protects the proceeds of a policy of life insurance from any law relating to insolvency or bankruptcy or from being seized under the process of any Court, does not bind the Crown; and therefore a debt due to the Crown for the maintenance of an insane patient is payable out of such proceeds.

Decision of the Supreme Court of New South Wales, *sub nom. In the Estate of Andrew Mattson* (6 N.S.W., S. R., 11) reversed.

THE ATTORNEY-GENERAL FOR NEW SOUTH WALES *v.* THE CURATOR OF INTESTATE ESTATES, [1907] A. C. 519; 77 L. J. P. C. 14; 97 L. T. 614; 23 T. L. R. 752—P. C.

3. *Crown Lands*—"Holder of a Conditional Purchase"—Fulfilment of Conditions—*Crown Lands Act, 1884* (No. 18), s. 7.]—The words "holder of a conditional purchase" in sect. 7 of the Crown Lands Act, 1884, mean a person who holds all the lands he purchased with the conditions originally attaching thereto still unfulfilled; they do not mean a person who has complied with all the conditions which originally attached to the purchase.

Decision of the Supreme Court of New South Wales (7 N.S.W., S. R., 538) reversed.

CHIPPENDALL *v.* LAIDLEY & Co., 29 T. L. R. 38 [—P. C.]

4. *Parliament—Legislative Assembly—Power to Make Standing Orders—"Orderly Conduct" of Assembly—Suspension of Member Charged with Criminal Offence—Constitution Act, 1902* (No. 32), s. 15.]—By sect. 15 (1) of the Constitution Act, 1902, "the Legislative Council and Legislative Assembly shall, as there may be occasion, prepare and adopt respectively standing rules and orders regulating (a) the orderly conduct of such Council and Assembly respectively. . . . (2) Such rules and orders shall by such Council and Assembly respectively be laid before the Governor, and being by him approved shall become binding and of force." The House itself is the sole judge whether an "occasion" has arisen for the adoption of a standing order regulating the orderly conduct of the Assembly, and no Court of law can question the validity of a standing order duly passed and approved which, in the opinion of the House, is required by the exigency of the occasion, unless upon a fair view of all the circumstances it is apparent that it does not relate to the orderly conduct of the Assembly.

The plaintiff, who was a member of the Legislative Assembly, and who had been Secretary for Lands, was found by a Royal Commission to have been guilty of misconduct in his office, and criminal proceedings were pending against him. A resolution was moved in the Legislative Assembly that the House should forthwith proceed to consider the report of the Royal Commission, which contained findings of misconduct against the plaintiff. The Speaker ruled that the House could not proceed with the resolution,

as the plaintiff might thereby be prejudiced in the criminal proceedings. The House thereupon passed a standing order that "whenever it shall have been ruled or decided (whether before or after the approval of this standing order) that the House may not proceed on a matter which has been initiated in the House affecting the alleged misconduct of a member, because thereby the said member may be prejudiced in a criminal trial then pending on charges founded on such misconduct, the House may suspend such member from the service of the House until the verdict of the jury has been returned or until it is further ordered." This standing order was approved by the Governor. The House then passed a resolution suspending the plaintiff from the service of the House until the verdict in the criminal trial or until further order.

HELD—the order was enforceable against the plaintiff.

Decision of the Supreme Court of New South Wales (7 S. R., N.S.W., 126) reversed.

HARNETT *v.* CRICK, [1908] A. C. 470; 99 L. T. 601; 24 T. L. R. 869—P. C.

**(c) Queensland.**

[No paragraphs in this vol. of the Digest.]

**(d) South Australia.**

5. *Appeal upon Costs—Licensing Acts—Local Option Poll—Irregularity—Prohibition—Costs against Justices—Local Option Act, 1905* (5 Edw. 7, No. 897).]—Upon an application for a prohibition against licensing justices to prevent them from further proceeding to determine the question of the renewal of publicans' licences upon the ground that there had been irregularities in procedure under the Local Option Act, 1905, the justices appeared by counsel against the application. The Supreme Court of South Australia granted the prohibition, but refused to give costs against the justices.

HELD—that, as the Court had exercised its discretion by refusing to give costs, no appeal lay.

RIEKEN *v.* YORKE PENINSULA LICENSING JUSTICES—KEAM *v.* ADELAIDE LICENSING JUSTICES, [1908] A. C. 454; 99 L. T. 529; 24 T. L. R. 821—P. C.

6. *Licensing Acts—Local Option—Store-keeper's Licence—Brewers' Colonial Ale Licence—Licensed Victuallers Act, 1880* (No. 191), s. 10; 1901 (No. 773), ss. 2, 4, 5, 6; 1902 (No. 784), ss. 3, 5, 6—*Local Option Act, 1905* (No. 897), s. 5.]—A brewer's Colonial ale licence is not a store-keeper's licence within the meaning of sect. 5, sub-sect. 2, of the Local Option Act, 1905.

MCGRATH *v.* ADELAIDE LICENSING JUSTICES, [1908] A. C. 487; 77 L. J. P. C. 129; 99 L. T. 457; 24 T. L. R. 818—P. C.

**(e) Victoria.**

[No paragraphs in this vol. of the Digest.]

**Australia—Continued.****(f) Western Australia.**

**7. Title to Land—Issue of Certificate of Title—“Loss or Damage” caused to True Owner—Buildings Erected on Land since Issue of Certificate—Land Transfer Act, 1893** (56 Vict., No. 14), s. 207.]—A certificate of title to land belonging to the plaintiff (a remainderman) had been wrongfully issued to a person under the Land Transfer Act, 1893, and the plaintiff had established his right to damages in respect thereof. It appeared that between the date of the issue of the certificate and the accrual of the plaintiff's right of action to recover the land, buildings had been erected thereon.

**HELD**—that the “loss or damage” which the plaintiff was entitled to recover against the Registrar of Titles under sect. 207 of the Act was to be measured by the value of the land with the buildings thereon at the time when the plaintiff's right of action accrued.

**SPENCER v. REGISTRAR OF TITLES**, [1908] A. C. 235; 77 L. J. P. C. 43; 98 L. T. 288; 24 T. L. R. 282—P. C.

**III. BRITISH SOUTH AFRICA.****(a) Bechuanaland.**

[No paragraphs in this vol. of the Digest.]

**(b) Cape Colony.**

**8. Insolvency—Preference—General Bond to Secure Future Advances—Subsequent Bond—Date of Advances—Priority.**]—Upon an issue under Cape law as to a preferential claim in an insolvency liquidation.

**HELD**—that, though a general bond given to secure future advances is prior in date of execution and of registration to another bond, preference is to be determined by the date of the debts and not of the securities, and a security earlier in point of date, but under which no advance was made at the time, must give place to one later in point of date, but given for an actual advance made before an advance has been made under the earlier security.

Decision of the Supreme Court of the Cape of Good Hope (16 Cape Times L. R. 85) affirmed.

**THE STANDARD BANK OF SOUTH AFRICA, LD.** [v. HEYDENRYCH, [1907] A. C. 336; 76 L. J. P. C. 73; 97 L. T. 148; 23 T. L. R. 679; 14 Manson, 273—P. C.]

**(c) Natal.**

[No paragraphs in this vol. of the Digest.]

**(d) Transvaal Colony.**

**9. Purchase and Sale of Land—Consideration—Shares in Syndicate to be Formed for Purpose of “Development”—Insufficient Working Capital—Ambiguity—Specific Performance.**]—The Court refused to enforce specific performance of a contract for the sale of a farm in consideration of certain shares in a syndicate to be formed for the purpose of developing the farm as a mining property, the vendor refusing to transfer

the farm for shares in the syndicate upon the ground that the working capital of the syndicate was not sufficient for the purpose. The Court was of opinion that the contract was too ambiguous to be enforced, there being nothing to define the extent of operations or amount of working capital contemplated by the parties.

Decision of the Supreme Court of the Transvaal ([1907] T. S. 508) affirmed.

**DOUGLAS v. BAYNES**, [1908] A. C. 477; 99 L. T. [599; 24 T. L. R. 896—P. C.]

**IV. CANADA.****(a) Dominion Generally.**

**10. Legislative Powers—Court of Appeal for Canada—Power of Provincial Legislature to Limit Appeals—Revised Statutes of Canada—1906, c. 139, ss. 35, 36—British North America Act, 1867** (30 & 31 Vict. c. 3), ss. 92, 101.]—A Provincial Legislature has no power to limit the right of appeal from the Provincial Courts to the Supreme Court of Canada, which is conferred by sect. 36 of c. 139, of the Revised Statutes of Canada, 1906, even in matters which are, by sect. 92 of the British North America Act, 1867, within the exclusive jurisdiction of the Provincial Legislature.

**THE CROWN GRAIN CO., LD., AND THE ATTORNEY-GENERAL FOR THE PROVINCE OF MANITOBA v. DAY AND THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA**, [1908] A. C. 504; 24 T. L. R. 913—P. C.

**11. Legislative Powers—Railways—Direction to Execute Works—“Person” Interested—Dominion Railway Act of 1888, ss. 187, 188—British North America Act, 1867** (30 & 31 Vict. c. 3), s. 91, sub-s. 29; 92, sub-s. 10—Interpretation Act, 1886, s. 7, sub-s. 2.]—Sects. 187 and 188 of the Dominion Railway Act, 1888, are *intra vires* of the Dominion Legislature.

In sect. 188 a “person” includes a municipal body.

Therefore the Privy Council Railway Committee can validly order a railway company to safeguard a “through” railway by providing gates and watchmen at certain level crossings, and may validly order the corporation of the city in or close to which such crossings lie to pay a portion of the cost.

**TORONTO CORPORATION v. CANADIAN PACIFIC RY. CO.**, [1908] A. C. 54; 77 L. J. P. C. 29; 97 L. T. 726—P. C.

**12. Temperance Act—Search Warrant before Prosecution—Certiorari—Special Leave to Appeal—Canada Temperance Act, 1888** (51 Vict. c. 34), s. 10.]—A search warrant was issued and executed under the Canada Temperance Act, 1888; and a quantity of intoxicating liquor was found upon the hotel premises searched. The appellant was convicted in respect thereof and an order made for the destruction of the liquor. The Supreme Court refused a *certiorari* to bring up and quash the record of the search and the destruction order.

**HELD**—that the decision was plainly correct,



**Canada—Continued.**

and that special leave to appeal should be refused.

TOWNSEND *v.* COX, [1906] A. C. 514; 76 L. J. [P. C. 98; 97 L. T. 620—P. C.]

**13. Trust—Greek Orthodox Church—Construction.**—A permit was granted to the trustees of a congregation to cut logs on a piece of Government land "to be used on the erection of a church building for the mission of the Greek Orthodox Church and for no other purpose."

**HELD**—that as soon as the permit was acted upon, the land was impressed with a trust for the named purpose.

After the permit was granted the land was in error granted by the Land Office to a Roman Catholic bishop in trust for the purposes of a "Greek Catholic Church"; the bishop assigned it to the trustees of the "Orthodox" congregation.

**HELD**—that the governing trust was that contained in the permit.

Decision of Supreme Court (37 Can. S. C. R. 177) affirmed.

ZACKLYNSKI AND OTHERS *v.* POLUSHIE AND [OTHERS, [1908] A. C. 65; 77 L. J. P. C. 17; 24 T. L. R. 152—P. C.]

**14. Will—Construction—Gift to Children—Conditions in Restriction of Alienation—Enjoyment of Usufruct—Grandchildren Conditionally Substituted—No Right of Accretion.**—A Canadian directed by his will that his estates should be divided into equal shares amongst his seven children, who were to have the usufruct and enjoyment of all his property. On the decease of any child such child's children were to have the full proprietary right and interest therein. To his grandchildren thus substituted for his children he gave the right to use, enjoy, or dispose of the same as it might seem good to them, instituting them for this purpose his universal legatees.

He prescribed three conditions: (1) that the property bequeathed to his children should not be assignable, or capable of being seized by their creditors; (2) that it should not be sold or alienated under any pretext, but should pass "en nature" to his grandchildren; (3) that the grandchildren should not alienate the share of the property which should belong in usufruct to their respective fathers or mothers before the said usufruct had come to an end.

**HELD**—that each child was entitled to his specific share (which had been ascertained by a statutory partition) as sole proprietor subject to the condition of handing it over to his children at his death; and that there was no right of accretion amongst either the testator's children or grandchildren.

PRÉVOST *v.* PRÉVOST, [1908] A. C. 541; 24 [T. L. R. 892—P. C.]

**(b) British Columbia.**

**15. Petition of Right—Refusal of Provincial Secretary to Present Petition to Lieutenant-Governor—Subsequent Presentation of Petition**

—*Damages—Crown Procedure Act (Revised Statutes of British Columbia, 1897, c. 57), s. 4.*]

—The Chief Commissioner of Lands and Works of British Columbia having refused to renew a special licence for cutting and carrying away timber on a tract of land, the licensee prepared a petition of right setting forth the application and refusal, and left it with the Provincial Secretary of British Columbia for submission to the Lieutenant-Governor for his fiat, in accordance with sect. 4 of the Crown Procedure Act of British Columbia. The Provincial Secretary in a letter to the suppliant's solicitors stated that he declined to submit the petition to the Lieutenant-Governor. Thereupon the suppliant brought an action against the Provincial Secretary claiming damages for refusing to submit the petition in accordance with the Act. Before the defence was delivered the petition was submitted to the Lieutenant-Governor, who refused his fiat. The Judge at the trial having held that there was no evidence to go to the jury:—

**HELD**—that a cause of action arose upon the refusal to submit the petition to the Lieutenant-Governor, and it was for the jury to say whether any and, if so, what damages flowed therefrom.

FULTON *v.* NORTON, [1908] A. C. 451; 99 L. T. [455; 24 T. L. R. 794—P. C.]

**16. Divorce—Power of Supreme Court to grant Divorce—English Law Act (Revised Statutes of British Columbia, c. 115), s. 2.**—The Supreme Court of British Columbia has power to grant a decree of divorce between persons domiciled in British Columbia in respect of matrimonial offences committed there. The jurisdiction may be exercised by a single Judge of the Court.

WATTS AND THE ATTORNEY-GENERAL FOR [BRITISH COLUMBIA *v.* WATTS, [1908] A. C. 573; 77 L. J. P. C. 121; 24 T. L. R. 911—P. C.]

**(c) Lower Canada.**

[No paragraphs in this vol. of the Digest.]

**(d) Manitoba.**

[No paragraphs in this vol. of the Digest.]

**(e) Ontario.**

**17. Limitation of Actions—Unregistered Conveyance—Subsequent Registered Mortgage—Right of Entry—Registry Act (Revised Statutes of Ontario, 1897, c. 136), s. 87.**—A lady upon her marriage in 1891 conveyed land to a solicitor to the intent that it might be reconveyed to herself and her husband. The solicitor registered the conveyance to himself, and executed the reconveyance, but did not register it, producing to his clients a forged certificate of registration. Subsequently in 1895 the solicitor mortgaged the land, and the mortgage was registered. In 1903 the mortgagee brought an action to enforce his mortgage.

**HELD**—that under sect. 87 of the Registry Act (Ontario) the unregistered conveyance to the husband and wife was void as against the subsequent mortgagee, who had advanced money



**Canada—Continued.**

without notice of it, and had registered his mortgage; but that it was not void as against the solicitor, and that therefore no right of entry accrued until the mortgage was registered, and the Statute of Limitations did not begin to run until 1895, and the action was not barred.

Decision of the Supreme Court of Canada (36 Can. S. C. R. 455) reversed.

McVITY AND ANOTHER *v.* TRANOUTH AND [ANOTHER, [1908] A. C. 60; 77 L. J. P. C. 37; 97 L. T. 853; 24 T. L. R. 165—P. C.

**18. Revenue — Succession Duty — Property Locally Situate Outside the Province—“Direct Taxation Within the Province” — Succession Duty Act (Rev. Stat. Ont., c. 24), s. 4—British North America Act, 1867 (30 & 31 Vict. c. 3), s. 92, sub-s. 2.]**—The Legislature of the Province of Ontario has no power to impose a tax, such as succession duty, on movable property locally situate outside the Province.

Decisions of the C. A. for Ontario (15 Ont. L. R. 416) reversed.

WOODRUFF AND OTHERS *v.* THE ATTORNEY-GENERAL FOR ONTARIO *et contra*, [1908] A. C. 508; 24 T. L. R. 912—P. C.

**19. Sale of Land for Arrears of Taxes—Purchase by Corporation—Irregularity—Insufficient Description of Land in Assessment—Notice—Waiver—Employing Persons to Bid—Time for Redemption—Assessment Act (Rev. Stat. Ont., 1897, c. 224), ss. 184, 193—(3 Edw. 7, c. 86), s. 8.]**—Sect. 8 of 3 Edw. 7, c. 86, which validates all sales of lands within the city of Toronto for arrears of taxes, notwithstanding any irregularity in the assessment or other proceedings for imposition of any taxes in arrear, or any failure to comply with the requirements of the Consolidated Assessment Act, 1892, or of the Assessment Act in regard to the manner in which any assessment roll or collector's roll of the city has been prepared, or any other failure or omission on the part of any official of the city to comply with any requirement of the Acts, applies to purchases by the city corporation of land in respect of which the taxes are in arrear.

An insufficient description of the land in the assessment roll is an irregularity which is cured by the section.

The failure to give notice to the owner of the land, as required by sect. 184, sub-sect. 3, of the Assessment Act, that the corporation intend to purchase, is also an irregularity which is cured by the section. Further, such failure to give notice may be waived by the owner.

The insufficiency of the certificate given by the treasurer under sect. 193 of the Assessment Act is also cured by the section.

The fact that the Assessment Commissioner, thinking it necessary under sect. 184, sub-sect. 3, of the Assessment Act that a third person should bid, procured two persons to make bids less than the amounts of the taxes in arrear at the sale, held not to invalidate the sale.

Where the corporation purchase the land the owner can only redeem within one year from the

purchase, subject to the proviso in sect. 8 of 3 Edw. 7, c. 86.

TORONTO CORPORATION *v.* RUSSELL, [1908] [A. C. 493; 24 T. L. R. 908—P. C.]

**20. Sale of Land for Arrears of Taxes—Rights of Purchaser—Certificate—Conveyance—Registration—Defaulting Owner Selling Property—Priorities—Revised Statutes of Ontario, 1887, c. 23, ss. 20, 26; c. 193, s. 184.]**—Where the Government sells lands for arrears of taxes the purchaser on obtaining a certificate of sale becomes the effective owner unless the defaulter redeems within a year, and he is absolutely entitled to a conveyance although the certificate has got into the hands of the defaulter.

A person claiming under a conveyance from the defaulter registered before the purchaser from the Government registers his conveyance, must in order to defeat the latter prove a valid written transfer to himself from such purchaser. Unless he can prove an actual purchase by himself he cannot rely on the fact that the conveyance from the Government was not registered within eighteen months.

McCONNELL *v.* BEATTY, [1908] A. C. 82; 77 [L. J. P. C. 25; 98 L. T. 66—P. C.]

**21. Trade Union, Action against—Actionable Conspiracy—Resolutions of Union calling a Strike—Misdirection.]**—The respondents sued the appellants (who represented the members of a trade union), alleging that they had conspired to injure the respondents in the conduct of their business, and that in pursuance of the conspiracy the union caused the respondents' men to go out on strike. The Judge in effect directed the jury that if the resolutions of the union calling out the plaintiffs' men was the cause of the strike they were an actionable wrong, without regard to the motive and without regard to the conspiracy alleged.

HELD—that this direction could not be supported and that there must be a new trial.

JOSE *v.* METALLIC ROOFING COMPANY OF [CANADA, LD., [1900] A. C. 514; 24 T. L. R. 878—P. C.]

**(f) Quebec.**

**22. Arbitration—Arbitrators to Assess Value of Land taken Compulsorily—Also Appointed “Mediators”—Exceeding Terms of Submission—Award Set Aside.]**—Arbitrators were appointed by deed to value three plots of ground acquired compulsorily by a railway company and to assess damages. It was provided that they should act as “mediators,” but should conform to art. 161 of the Railway Act, 1903.

Their award valued two of the plots, but instead of valuing the third ordered the company to return part of it and to construct a road on their own property for the benefit of the claimants.

HELD—that the award was void *in toto* because the arbitrators had disregarded their instructions and not merely committed slight irregularities.

QUEBEC IMPROVEMENT CO. *v.* QUEBEC BRIDGE [AND RY. CO., [1908] A. C. 217; 77 L. J. P. C. 45; 98 L. T. 290—P. C.]

**Canada—Continued.****23. Fishery Rights—Gulf of St. Lawrence—Whether included in a Deed of Grant.**

HELD—that upon its true construction an old grant by the King of France of a seignior and fief on the Gulf of St. Lawrence was not sufficiently definite to give to the grantee exclusive right to fish for salmon on the shore of the land included in the grant.

CABOT *v.* ATTORNEY-GENERAL FOR QUEBEC, [1907] A. C. 511; 77 L. J. P. C. 11; 97 L. T. 618; 34 T. L. R. 762—P. C.

**V. CEYLON.**

[No paragraphs in this vol. of the Digest.]

**VI. CHANNEL ISLANDS.**

[No paragraphs in this vol. of the Digest.]

**VII. GIBRALTAR.**

[No paragraphs in this vol. of the Digest.]

**VIII. HONG KONG.**

[No paragraphs in this vol. of the Digest.]

**IX. JAMAICA.**

[No paragraphs in this vol. of the Digest.]

**IXB. MALTA.**

**24. Will—Fideicommissum and Primogenitura—Will giving Power to Legatee to create Primogenitura—Legatee imposing Condition on Holders of Primogenitura to adopt Name of Testator—Power to impose Condition.]**

HELD—that a will which created a *fideicommissum* in certain immovable property and which gave the legatee power to create *primogenitures*, gave the legatee no power, when creating the *primogenitures*, to impose the condition that any holder of a *primogenitura* should be bound, on penalty of forfeiture, to add the surname of the original testator to his own name.

STRICKLAND *v.* STRICKLAND, [1908] A. C. 551; [99 L. T. 448; 24 T. L. R. 791—P. C.]

**IXC. MAURITIUS.**

**25. Mahomedan Law—Administration of Wakf Estate—Rights of Wakifs—Practice of Court—Scheme of Administration—Charter of Incorporation superseded.]**—From time to time from 1852 onwards certain wakf properties in Mauritius were purchased "for the whole Mahomedan congregation of the island," consisting of Indian immigrants from Cutch, Hallal, and Surat, and their descendants, and were dedicated by the deeds inalienably for the purpose of a mosque. The overwhelming majority of the congregation belonged to the Cutchee class, and in 1877 the deeds of properties bought declared that such properties were bought on behalf of the Cutchees, a committee of whom were to administer them and all the other properties belonging to the mosque. Later purchases were expressed to be made, some on behalf of the Cutchees, others on behalf of the congregation. In 1903 two deeds were executed by a body of Cutchees by which they

formed themselves into a society afterwards incorporated under Ordinance 22 of 1874 for certain pious and charitable purposes, declared that they brought into the society in full ownership all the said purchased properties, with extensive powers of selling and letting the same, other than the mosque and its accessories, of which latter they reserved to themselves the exclusive management.

In actions brought by the Hallaye and Soortee classes the Court below ordered the deeds to be set aside so far as they gave exclusive administration as of right to the Cutchees, and substituted a scheme giving to the plaintiffs a share in the administration, but subject to future modifications. On appeal—

HELD—that as the deeds could not be maintained consistently with the rights of the plaintiffs they should be set aside *in toto*, and that as the charter of incorporation in consequence became inoperative, the amending scheme must also be set aside.

IBRAHIM ESMAEL *v.* ABDOL CARRIM PEER-  
[MAMODE; IBRAHIM ESMAEL *v.* ABOO BAKAR  
MAMODE TAHER, [1900] A. C. 526; 99 L. T. 445; 24 T. L. R. 790—P. C.]

**X. NEWFOUNDLAND.**

**26. Street Railway—Removal of Snow from Track—Leveling Snow on Each Side of Track—Depth Prescribed by City Engineer—St. John's Street Railway Act, 1896 (60 Vict. c. 20), s. 42.]**

—By the St. John's Street Railway Act, 1896, a company was authorised to make and operate a street railway in St. John's, and by sect. 42 it might remove snow and ice from the railway track so as to enable it to operate its cars, provided that, in case such snow or ice should be removed from its track or disturbed or thrown out by the plough, leveller, or tools of the company; and "it shall be the duty of the company within forty-eight hours to level the said snow or ice on each side of the track to a uniform depth, to be determined by the engineer of the council, and so as not to impede the ordinary traffic of the street." The company removed snow from the railway track, and the engineer of the council determined that eight inches was the necessary depth for the snow on the sides of the track, so as not to impede the ordinary traffic of the street. The company could not comply with the engineer's requirements unless it removed some snow out of the street, which it refused to do. The council thereupon removed the snow, and claimed to recover the expense from the company.

HELD—that it was a condition of the licence to break up the snow in the streets and to remove it from the railway track that the company should level the snow on each side of the track to a uniform depth to be determined by the engineer of the council, even though this necessitated the removal of all or some of the snow from the streets, and that therefore the company was liable for the expense of removing the snow.

SHEA *v.* REID-NEWFOUNDLAND COMPANY, [1908] A. C. 520; 24 T. L. R. 879—P. C.]



## XI. NEW ZEALAND.

**27. Revenue—Income Tax—Profits in New Zealand—Commission Agent for Sale of Goods in England—Land and Income Assessment Act, 1902 (64 Vict. No. 49), s. 51.**—The appellants were provision commission agents in London, and through their agents in New Zealand they made advances there to the owners of butter and cheese factories against their produce, which was then consigned to the appellants in London and sold there, and the proceeds of the sales, after deducting expenses and commission, were remitted to New Zealand. For the purpose of making the advances the appellants had a credit at various banks in New Zealand. The appellants having been assessed to income tax in New Zealand under the Land and Income Assessment Act, 1900 :—

HELD—that, as the contracts for the sale of the produce from which the appellants' profits were made, and which formed the essence of their business, were made in England, and not in New Zealand, the appellants were not assessable to income tax in New Zealand thereon.

Decision of the Supreme Court of New Zealand (26 N. Z. L. R. 625) reversed.

LOVELL AND CHRISTMAS, LD. *v.* THE COMMISSIONERS OF TAXES, [1908] A. C. 46; 77 L. J. P. C. 31; 97 L. T. 651; 24 T. L. R. 32—P. C.

## XII. SHANGHAI.

[No paragraphs in this vol. of the Digest.]

## XIII. SIERRA LEONE.

[No paragraphs in this vol. of the Digest.]

## XIV. TRINIDAD.

[No paragraphs in this vol. of the Digest.]

## XV. ZANZIBAR.

[No paragraphs in this vol. of the Digest.]

## XVI. INDIA.

**28. Benami Transaction—Conveyance of Land—Intent to Defraud Equitable Mortgagee—Fraud not Carried Out—Right to Recover Land—Time for Bringing Action—Indian Limitation Act, 1877 (Act No. XV), Sched. II., arts. 91, 144.**—Where a benami conveyance of land is made for the purpose of fraudulently defeating the claim of an equitable mortgagee, and the claim of the latter is not defeated, the grantor can recover back the land from the grantee. The benami conveyance being in such circumstances an inoperative instrument, it is unnecessary to bring an action to set it aside, and therefore art. 91 of Sched. II. to the Indian Limitation Act, 1877, does not apply, and an action for the recovery of the land can be brought within twelve years as provided by art. 144.

PETHERPERMAL CHETTY *v.* MUNIANDY SERVAI, [24 T. L. R. 462—P. C.]

**29. Bengal Tenancy Act—Arrears of Rent—Sale of Holding—Suit by One Shaver—Agreement for Payment of Rent Separately—Act VIII. of 1885, ss. 65, 188.**—Where two or more owners of a zemindari interest have created a putni

tenure at a rent reserved, and the putni rent is in arrear so far as the share of one of the owners of the zemindari interest is concerned, the latter may bring a suit to recover the whole rent of the tenure and (for that purpose) to bring to sale the tenure itself, making his co-sharers, who refuse to join as plaintiffs, defendants in the suit.

An express or implied agreement between the zemindars and the putnidars that the shares in the putni rent of the several zemindars shall be paid separately merely entitles the several zemindars to sue separately for their respective shares of the rent, and does not affect the right to bring the tenure to sale for arrears of rent.

RAJA PRAMADA NATH ROY *v.* RAJA RAMANI [KANTA ROY AND OTHERS, 24 T. L. R. 219—P. C.]

**29a. Burmah—Sale of Mortgaged Property by Order of Court—Purchaser unaware of Encumbrance—Ignorance of English—Misrepresentation—Indian Contract Act, s. 19—Principles where Court is concerned in Sales.**—At an auction sale in execution held under the direction of the Court the appellant purchased property which he believed to be unencumbered, whereas he actually purchased a worthless equity of redemption. The circumstances were clearly proclaimed in English at the sale, but the appellant, very ignorant of English, was misled by a subsequent statement in the vernacular by an officer of the Court to the effect that the sale was at the instance of the mortgagees.

Sect. 19 of the Indian Contract Act provides that a contract is not voidable for misrepresentation if the party whose consent is so caused had the means of discovering the truth with ordinary diligence.

HELD—that sect. 19 of the Indian Contract Act had no application in this case.

HELD FURTHER—that, in sales under the direction of the Court, the Court must be scrupulous in the extreme and very careful that no taint or touch of misrepresentation is found in the conduct of its ministers, and that it would be disastrous if the Court were to enforce an illusory and unconscientious bargain against a purchaser misled by its duly accredited agents.

MAHOMED KALA MEA *v.* HARPERINK AND [OTHERS, 25 T. L. R. 180.—P. C.]

**30. Champerty—Maintenance.**—The English law with regard to champerty and maintenance has no counterpart in India.

RAJA RAI BHAGWAT DAYAL SINGH *v.* DEBI [DAYAL SAHU, 24 T. L. R. 283—P. C.]

**31. Mitakshara—Property Devised to Wife as "Malik"—Absolute or Limited Interest.**—Where immovable property is devised under the Hindu law to the testator's wife as "malik" of the property, unless there is something in the context to the contrary, the widow takes an absolute and not merely a life interest in the property. The mere fact that the donee is the testator's wife is not sufficient to rebut the presumption of that meaning.

Padam Lal *v.* Tek Singh (I. L. R. 29 All. 217) approved.



**India—Continued.**

Decision of the High Court at Allahabad (I. L. R. 25 All. 351) reversed.

MUSAMMAT SURAJMANI AND OTHERS *v.* RABI  
[NATH OJHA AND ANOTHER, 24 T. L. R. 218  
—P. C.]

**DEPENDANTS.**

See MASTER AND SERVANT.

**DEPOSIT.**

See INSURANCE; PARLIAMENT.

**DEPOSITIONS.**

See CRIMINAL LAW AND PROCEDURE;  
EVIDENCE.

**DEPRECIATION.**

See INCOME TAX; TRUSTS AND  
TRUSTEES.

**DERELICT.**

See SHIPPING AND NAVIGATION.

**DESCENT AND DISTRIBUTION.**

- |  |      |
|--|------|
|  | COL. |
| I. DEVOLUTION OF ESTATE . . .  | 181  |
| [No paragraphs in this vol. of the Digest.]                                |      |
| II. DISTRIBUTION OF ASSETS . . .   | 181  |
| And see CONFLICT OF LAWS, No. 7;<br>COPYHOLDS; HUSBAND AND WIFE;<br>WILLS. |      |

**I. DEVOLUTION OF ESTATE.**

[No paragraphs in this vol. of the Digest.]

**II. DISTRIBUTION OF ASSETS.**

1. *Hotchpot—Intestacy—Executors—Express Trust of Residue—Partial Failure of Beneficial Interests—Children Act of Kin—Previous Advancements to—Statute of Distribution, 1670 (22 & 23 Car. 2, c. 10), s. 5—Executors Act, 1830 (11 Geo. 4, & 1 Will. 4, c. 40), s. 1.*—R. bequeathed the residue of his estate to his executors upon trust, as to £1,500 to invest and pay the income of his daughter A. for life, and after her death to divide the capital amongst her children, and as to the remainder in trust for all his children and their issue.

Upon A.'s death without children the £1,500, being not disposed of, passed to his next of kin,

*i.e.*, four daughters and the children of a deceased daughter. In distributing it:

**HELD**—that the Executors Act, 1830, did not apply, being only applicable to cases where there is a bare appointment of executors; and that advances made by R. to his daughters need not be brought into hotchpot, the rule being that the doctrine of hotchpot does not apply to a case of partial intestacy of the beneficial interest.

*Jochell v. Jeffreys* ((1701), Prec. Ch. 170); *Wheeler v. Sheer* ((1730), Mos. 301), and *Cowper v. Scott* ((1731), 3 P. Wms. 119) followed.

*Williams v. Arkle* ((1875), L. R. 7 H. L. 606) applied.

Decision of *Neville, J.* ([1907] 2 Ch. 84; 74 L. J. Ch. 454; 97 L. T. 173) affirmed.

*IN RE ROBY, HOWLETT v. NEWINGTON*, [1908]  
[1 Ch. 71; 77 L. J. Ch. 169; 97 L. T. 773—  
C. A.]

2. *Intestates Act, 1890—“Intestates”—All Beneficiaries under Will Predeceasing Testator—Intestates Act, 1890 (53 & 54 Vict. c. 29), s. 1.*—A person made a will and at the time of his death the executor appointed by the will and all the beneficiaries under the will were dead.

**HELD**—that he had died “intestate” within the meaning of sect. 1 of the Intestates Act, 1890.

*IN RE CUFFE, FOOKS v. CUFFE*, [1908] 2  
[Ch. 500; 77 L. J. Ch. 776; 99 L. T. 267;  
24 T. L. R. 781; 52 Sol. Jo. 661—Joyce, J.]

**DESIGNS.**

See TRADE MARKS AND DESIGNS.

**DETINUE AND DETENTION.**

1. *Police Detaining Object—Prosecution for Exposure of Monstrosity—Plea of [Guilty—Subsequent Action of Detinue against Police.]*—The respondent had pleaded guilty to a prosecution for exposing, against public decency, the body of a two-headed child preserved in spirits, and had been bound over to come up for judgment if called upon. The High Court of Australia held that an action would lie against the police for refusing to return the dead body of the respondent. A petition for special leave to appeal against this decision was dismissed.

*SPENCE v. DOODEWARD*, *Times*, December 16th,  
[1908—P. C.]

**DEVASTAVIT.**

See EXECUTORS.

**DEVISE.**

See WILLS.

**DIGNITIES.**

1. *Peerage — Secondary Evidence.*] — In a peerage claim the evidence consisted mostly of the testimony of relatives, a family Bible, and monumental inscriptions, there being no early record of births and marriages in Virginia, U.S., where the family had settled in 1750. Most of such records as had existed were destroyed in the Civil War, and secondary evidence was accepted.

THE FAIRFAX PEERAGE, [1908] W. N. 226—  
[Committee for Privileges.]

**DILAPIDATIONS.**

See ECCLESIASTICAL LAW ; LANDLORD  
AND TENANT.

**DIRECTORS.**

See COMPANIES.

**DISABILITIES.**

See HUSBAND AND WIFE ; INFANTS ;  
LUNATIC.

**DISCLAIMER.**

See BANKRUPTCY ; LANDLORD AND  
TENANT.

**DISCOVERY, INSPECTION &  
INTERROGATORIES.**

I. DISCOVERY.	COL.
(a) In general . . . . .	183
(b) Privilege . . . . .	185
(c) Ship's Papers . . . . .	185
II. INSPECTION . . . . .	185
[No paragraphs in this vol. of the Digest.]	
III. INTERROGATORIES . . . . .	185

And see EVIDENCE ; PLEADING ; PRACTICE.

**I. DISCOVERY.****(a) In general.**

1. *Joint Plaintiffs—Action by One Partner in Name of Firm—Non compliance by Other Partner with Order for Discovery—Application by Co-Plaintiff to Attach—Jurisdiction—Ord. 31, r. 21.*]—A partnership between S. and E., solicitors, having been dissolved, S., without the

consent or authority of E., brought an action in the firm's name to recover a bill of costs alleged to be due from a client of the firm. In compliance with an order of a Master, S. gave to E. an indemnity against the costs of the action. An order was made in action that the plaintiff should make an affidavit of documents, and a copy of this order was served by S. upon E. The former made an affidavit of documents, but the latter did not. The defendant having applied to dismiss the action on the ground of non-compliance with the order, S. took out a summons to attach E. for disobedience to the order.

HELD—that there was jurisdiction in such circumstances to entertain an application by one plaintiff to attach his co-plaintiff for disobeying the order.

SEAL AND EDGELOW *v.* KINGSTON, [1908] 2  
[K. B. 579 ; 77 L. J. K. B. 965 ; 99 L. T. 504 ;  
24 T. L. R. 650 ; 52 Sol. Jo. 532—C. A.]

2. *Libel—Particulars—General Allegations—Inspection of Books.*]—In an action by stock and share dealers for an alleged libel, which imputed to them that they carried on business in an improper manner, and were fraudulent dealers in stocks and shares, the defendant pleaded justification, and in support of the plea he delivered particulars which stated that the plaintiffs carried on a bucket-shop and were entirely dependent for their profits upon the losses of their customers, to whom they pretended to give independent and unbiassed advice as to dealings, and falsely represented that the persons who acted on their advice made large profits, and he set forth the titles of certain pamphlets issued by the plaintiffs as to investments and money-making. Upon an application by the defendant for an order for inspection of the plaintiff's books for the period of nine months next before the libel was published :

HELD—that, as the defendant had not stated any specific facts or instances in his particulars, he was not entitled to inspection.

*Yorkshire Provident Life Assurance Co. v. Gilbert* ([1895] 2 Q. B. 148 ; 64 L. J. Q. B. 578 ; 72 L. T. 445—C. A.) followed.

ARNOLD AND BUTLER *v.* BOTTOMLEY, [1908]  
[2 K. B. 151 ; 77 L. J. K. B. 584 ; 98 L. T.  
777 ; 24 T. L. R. 365 ; 52 Sol. Jo. 300—C. A.]

3. *Party Resident Abroad—Agent in United Kingdom.*]—In an action by a firm carrying on business abroad to recover the price of goods ordered through their agent in the United Kingdom, the defendants applied for discovery of documents.

HELD—that an order should be made with liberty to the agent of the plaintiffs in the United Kingdom to make discovery on their behalf.

DONOVAN *v.* TODD, BURNS & Co., [1908] 2  
[I. R. 100—Kenny, J.]

4. *Suing in Firm Name—Form of Order.*]—Where individuals sue, or are sued, under the name of a firm, and an order for discovery of

**Discovery—Continued.**

documents is made against them, it is not necessary that the order should specify the name of the individual to make discovery.

HERSKIND *v.* HALL, [1908] 2 I. R. 99—  
[Wright, J.]

**(b) Privilege.**

5. *Letters Written by Member with the Object of Getting his Society to take up his Case—Inspection—Disclosure.*—The plaintiff desired to bring an action against his former employers for alleged wrongful dismissal. He wrote a letter setting out the facts to the society of which he was a member, in order to get them, if they would, to take up the matter. The society, on the advice of their solicitor, decided to do so, and proceedings having been commenced, the defendants moved for inspection. The plaintiff claimed that the letters which had passed between himself and the society were privileged communications.

HELD—that as the plaintiff wrote the letters with the *prima facie* object of giving the society material on which the society was to satisfy itself that the plaintiff had such a cause of action that the society might properly take up the matter on his behalf, the principle of exemption from disclosure which applies to communication between a client and his professional adviser did not apply, and that the order giving the defendants inspection of these letters had been rightly made.

JONES *v.* GREAT CENTRAL RY. CO., 52 Sol.  
[Jo. 840—C. A.]

**(c) Ship's Papers.**

6. *Fire Insurance—Applicability—R. S. C., Ord. 31, r. 1.*—The practice with regard to ordering discovery of "ship's papers" in actions arising out of marine insurance is peculiar to that class of action; analogous orders cannot be made in fire insurance cases.

TANNENBAUM & CO. *v.* HEATH AND OTHERS  
[[1908] 1 K. B. 1032; 77 L. J. K. B. 634; 99  
L. T. 237; 24 T. L. R. 450; 52 Sol. Jo. 375;  
13 Com. Cas. 264—C. A.]

**II. INSPECTION.**

[No paragraphs in this vol. of the Digest.]

**III. INTERROGATORIES.**

7. *Slander—Privilege and Fair Comment—No Plea of Justification.*—The defendant, while acting as chairman of certain licensing justices, made statements concerning the plaintiffs, who were brewers, reflecting on the conduct of their business. The defence pleaded was (1) that, as the words were spoken by the defendant in his capacity of chairman, the occasion was privileged, and (2) fair comment. The defendant administered certain interrogatories with the view of establishing the truth of the alleged facts on which his comment was based. The Master allowed all the interrogatories, but the Judge at chambers struck them all out on the ground

that, as justification was not pleaded, they were oppressive.

HELD—that the defendant was entitled to administer such of the interrogatories as went to establish whether the facts on which he had based his comment were true or untrue, as the onus of proving that the words complained of were fair comment on a matter of public interest rested on him.

PETER WALKER & SONS, LD. *v.* HODGSON, 53  
[Sol. Jo. 81—C. A.]

**DISEASES.**

See ANIMALS; PUBLIC HEALTH.

**DISHONOUR.**

See BILLS OF EXCHANGE.

**DISORDERLY CONDUCT.**

See CRIMINAL LAW AND PROCEDURE.

**DISORDERLY HOUSES.**

See CRIMINAL LAW AND PROCEDURE.

**DISTRESS.**

I. IN GENERAL . . . . . COL.  
186

**II. EXEMPTIONS.**

(a) Generally . . . . . 187  
(b) Lodger's Goods . . . . . 189

[No paragraphs in this vol. of the Digest.]

**III. PROCEDURE.**

(a) Bailiff . . . . . 189  
[No paragraphs in this vol. of the Digest.]

(b) Possession . . . . . 189  
[No paragraphs in this vol. of the Digest.]

(c) Rescue . . . . . 189  
[No paragraphs in this vol. of the Digest.]

(d) Sale . . . . . 189  
[No paragraphs in this vol. of the Digest.]

**I. IN GENERAL.**

1. *Commencement of Bankruptcy—Distress for Rent on Day of Adjudication—Priority—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 42, 43.*—A debtor presented his petition on October 23rd at 12.50 p.m., and consented at the same time to the making of a receiving order and immediate



**In General—Continued.**

order of adjudication. On the same day his landlord distrained.

**HELD**—that by reason of sect. 43 of the Bankruptcy Act, 1883, the bankruptcy commenced at the actual hour when he presented his petition, although but for that section the order of adjudication being a judicial act would have operated from the first moment of the same day.

**IN RE BUMPUS, EX PARTE WHITE**, [1908] 2 K. B. 330; 77 L. J. K. B. 563; 98 L. T. 680; 52 Sol. Jo. 395; 15 Manson, 103—Bigham, J.

**2. Right of Appeal**—“*Criminal Cause or Matter*”—*Distress for Rent—Excessive Charges—Proceedings before Justices to Recover Treble the Excess—Penalty—Distress (Costs) Act, 1817* (57 Geo. 3, c. 93), ss. 1, 2—*Judicature Act, 1873* (36 & 37 Vict. c. 66), s. 47.—An appeal will not lie from the judgment of the King's Bench Division upon a case stated by justices on a summons to recover treble the amount of the excess alleged to have been illegally charged by a bailiff in respect of the costs of a distress for rent, under sect. 2 of the Distress (Costs) Act, 1817, the matter being a “criminal cause or matter” within sect. 47 of the Judicature Act, 1873.

**ROBSON v. BIGGAR**, [1908] 1 K. B. 672; 77 L. J. K. B. 203; 97 L. T. 859; 24 T. L. R. 125—C. A.

**II. EXEMPTIONS.****(a) Generally.**

**3. Fixtures—Hiring Agreement—Gas-Engine affixed to Land.**—A gas-engine was let by a hire-purchase agreement to the tenant of certain premises, the engine being attached to the premises in the following way:—A rectangular hole was excavated in the floor, and at each corner of the hole a spindle was set up, being made fast to the ground and projecting 18 inches, and the whole was then filled with concrete. The gas-engine, which had four holes in its base, was laid upon the spindles, and nuts were placed on the spindles and screwed down. The landlord of the premises distrained upon the gas-engine for rent due from the tenants before the latter had exercised his option of purchasing the engine.

**HELD**—that the engine was a fixture and had become part of the freehold, and was therefore not distrainable.

**Hobson v. Gorringe** ([1897] 1 Ch. 182; 66 L. J. Ch. 114; 75 L. T. 610; 45 W. R. 356—C. A.) and **Reynolds v. Ashby & Co.** ([1904] A. C. 456; 73 L. J. K. B. 946; 91 L. T. 607; 53 W. R. 129; 20 T. L. R. 766—H. L.) followed.

**Hellawell v. Eastwood** ((1851) 6 Ex. 295) not followed.

**CROSSLEY BROTHERS, LD. v. LEE**, [1908] 1 K. B. 86; 77 L. J. K. B. 199; 97 L. T. 850; 24 T. L. R. 35—Div. Ct.

**4. Person Exercising Public Trade—Things Delivered to be Managed in the Way of his Trade—Pictures in an Artists' Club.**—The plaintiff C. was the sub-lessee of certain premises

upon which he carried on a club to which artists, who were members, sent pictures for exhibition. Members and friends introduced by them alone could use the club, and the plaintiff received a commission upon all pictures sold. By the rules of the club the entire management of the pictures and their exhibition was vested in the picture committee. Certain pictures which were being exhibited were distrained upon by the superior landlord for rent due from the head lessee. The plaintiff C. and the artists who owned the pictures brought an action claiming an injunction to restrain the lessor from proceeding with the distress.

**HELD**—that the pictures were not delivered to the plaintiff, and, even if they were, they were not so delivered to him to be managed in the way of his trade so as to be privileged from distress, his trade being that of a club proprietor, and the committee having the management of the pictures.

**CHALLONER AND OTHERS v. ROBINSON**, [1908] 1 Ch. 49; 77 L. J. Ch. 72; 71 J. P. 553; 98 L. T. 222; 24 T. L. R. 38—C. A.

**5. Tools and Implements of Trade—Sample Typewriter—Law of Distress Amendment Act, 1888** (51 & 52 Vict. c. 21), s. 4—*County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 147.—A sample typewriter entrusted to a commercial traveller by his employers in order that he may take it round and show it to intending purchasers and demonstrate its use to them, is not a tool or implement of his trade within the meaning of sect. 147 of the County Courts Act, 1888, and is therefore not protected from distress for rent by sect. 4 of the Law of Distress Amendment Act, 1888.

**ADDISON v. SHEPHERD**, [1908] 2 K. B. 118; 77 L. J. K. B. 534; 72 J. P. 239; 99 L. T. 121—Div. Ct.

**6. Wearing Apparel, Bedding and Tools and Implements of Trade to the Value of £5—Piano Hired for Teaching—Law of Distress Amendment Act, 1888** (51 & 52 Vict. c. 21), s. 4—*County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 147.—A pianoforte, the property of the plaintiffs, was hired to H., on a hire-purchase agreement. The piano was used by H.'s wife for the purpose of giving music lessons to pupils on premises of which the defendant was the landlord. The defendant levied a distress on the premises for arrears of rent, and under that distress seized, amongst other things, the piano. Wearing apparel and bedding of the value of £5 were left on the premises.

**HELD**—that the pianoforte was an instrument of trade within the meaning of the Law of Distress Amendment Act, 1888.

**HELD ALSO**—that the requirements of the County Courts Act, 1888, s. 147, are satisfied provided wearing apparel or bedding or tools to the value of £5 are left on the premises.

**BOYD, LD. v. BILHAM**, 72 J. P. 495; [1908] [W. N. 206—Channell, J.]

**Exemptions—Continued.****(b) Lodgers' Goods.**

[No paragraphs in this vol. of the Digest.]

**III. PROCEDURE.****(a) Bailiff.**

[No paragraphs in this vol. of the Digest.]

**(b) Possession.**

[No paragraphs in this vol. of the Digest.]

**(c) Rescue.**

[No paragraphs in this vol. of the Digest.]

**(d) Sale.**

[No paragraphs in this vol. of the Digest.]

**DISTRIBUTION.***See* DESCENT AND DISTRIBUTION.**DISTRICT COUNCILS.***See* LOCAL GOVERNMENT.**DISUSED BURIAL GROUND.***See* BURIAL AND CREMATION.**DITCHES.***See* HIGHWAYS; SEWERS AND DRAINS.**DIVIDEND WARRANT.***See* COMPANIES.**DIVIDENDS.***See* BANKRUPTCY; COMPANIES.**DIVORCE.***See* HUSBAND AND WIFE.**DOCKS.***See* RAILWAYS AND CANALS; SHIPPING AND NAVIGATION; WATERS AND WATERCOURSES.**DOCTORS.***See* MEDICINE AND PHARMACY.**DOGS.***See* ANIMALS.**DOMESTIC ANIMALS.***See* ANIMALS.**DOMICIL.***See* BANKRUPTCY; CONFLICT OF LAWS.**DONATIO MORTIS CAUSA.***See* GIFTS.**DOWER.**

1. *Dower—Increase in Value of Property since Date of Death—Assignment of Particular Premises—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 2—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 1.*—The plaintiff claimed an assignment of her dower out of the property of her husband, who died intestate and without issue in 1885. The defendants pleaded, *inter alia*, the Statutes of Limitation.

**HELD**—that, although the statutes would have been a complete answer if the plaintiff had not been in possession, yet, as she was in fact in part possession of the property until 1898, her right of action did not accrue before that date, and that the plaintiff was entitled to an inquiry as to what freeholds her husband died seised of, with a direction to assign her dower in such of them as she was entitled to have it, the tenants to attorn tenants to her.

*WILLIAMSON v. THOMAS*, 125 L. T. Jo. 313—  
[Eve, J.]

**DRAINAGE.***See* METROPOLIS; NUISANCE; PUBLIC HEALTH; SEWERS AND DRAINS.**DRAMATIC COPYRIGHT.***See* COPYRIGHT AND LITERARY PROPERTY.**DRUGGISTS.***See* MEDICINE AND PHARMACY.

**DRUNKENNESS.**

See INTOXICATING LIQUORS.

**DURESS.**

See CONTRACTS; CRIMINAL LAW;  
EQUITY; WILLS.

**DYING DECLARATIONS.**

See CRIMINAL LAW AND PROCEDURE.

**EASEMENTS AND PROFITS  
À PRENDRE.****I. IN GENERAL . . . . . COL.  
191****II. PARTICULAR EASEMENTS.****(a) Rights of Way . . . . . 192**

[No paragraphs in this vol. of the Digest.]

**(i) Abandonment . . . . . 192**

[No paragraphs in this vol. of the Digest.]

**(ii) Conveyance . . . . . 192**

[No paragraphs in this vol. of the Digest.]

**(iii) Excessive User . . . . . 192**

[No paragraphs in this vol. of the Digest.]

**(iv) Grant of Right . . . . . 192**

[No paragraphs in this vol. of the Digest.]

**(v) Prescription . . . . . 192**

[No paragraphs in this vol. of the Digest.]

**(vi) Private Right of Way . . . . . 192**

[No paragraphs in this vol. of the Digest.]

**(vii) Way of Necessity . . . . . 192**

[No paragraphs in this vol. of the Digest.]

**(b) Rights of Water and Watercourses . . . . . 192****(c) Right to Light . . . . . 193****(d) Right to Support . . . . . 194**

[No paragraphs in this vol. of the Digest.]

**(e) Various . . . . . 194**

And see FISHERIES; GAME; LANDLORD  
AND TENANT; LIMITATION OF  
ACTION; SETTLEMENT.

**I. IN GENERAL.**

1. *Profit à prendre—No Stint—Commercial Purposes—Validity.*—The law does not recognise a prescription in a *que* estate for a *profit à prendre in alieno solo*, e.g., a right to fish, to be exercised without stint and for commercial purposes.

Decision of Neville, J. ([1908] 1 Ch. 230; 77 L. J. Ch. 111; 98 L. T. 236; 24 T. L. R. 105) reversed.

LORD CHESTERFIELD *v.* HARRIS, [1908] 2 Ch. [397; 77 L. J. Ch. 688; 99 L. T. 558; 24 T. L. R. 763; 52 Sol. Jo. 639—C. A.

**II. PARTICULAR EASEMENTS.****(a) Rights of Way.**

[No paragraphs in this vol. of the Digest.]

**(i.) Abandonment.**

[No paragraphs in this vol. of the Digest.]

**(ii.) Conveyance.**

[No paragraphs in this vol. of the Digest.]

**(iii.) Excessive User.**

[No paragraphs in this vol. of the Digest.]

**(iv.) Grant of Right.**

[No paragraphs in this vol. of the Digest.]

**(v.) Prescription.**

[No paragraphs in this vol. of the Digest.]

**(vi.) Private Right of Way.**

[No paragraphs in this vol. of the Digest.]

**(vii.) Way of Necessity.**

[No paragraphs in this vol. of the Digest.]

**(b) Rights of Water and Watercourses.**

2. *Artificial Watercourse—Higher and Lower Proprietors—Right to Abstract Water—Terms of Presumed Grant—Right to Bed of Channel.*—An artificial watercourse, constructed about 400 years ago, flowed from the River Eden at a point above the plaintiffs' tannery, and subsequently rejoined the river at a point below the defendants' mill. The defendants regulated the flow of water into the watercourse by means of a weir or sluice gates. The defendants having cut off the inflow of water, entered upon the bed of the stream and cut off the plaintiffs' pipes, which projected into the stream, and which were used in connection with their tannery, which was established in 1673. In an action by the plaintiffs for an injunction to restrain the defendants from interfering with the flow of water in the watercourse and from trespassing upon the bed of the watercourse.

HELD, granting an injunction—that the Court ought to infer that the watercourse was originally constructed for the mutual benefit of the tannery and the mill, and that the plaintiffs, as owners and occupiers of the tannery, were entitled, under a reservation made, or an agreement entered into, when the channel was constructed, to the enjoyment of a reasonable use of the water therein, not causing any sensible or material injury to the defendants as owners and occupiers of the mill.

*Semble*, in cases where an artificial channel or cut passes by or through the land of several proprietors, and water flows therein to serve the purposes of a lower proprietor, the proper grant to presume, in the absence of all evidence as to the terms and conditions upon which the channel was originally made, is the grant of a watercourse—that is, of the easement or right to the running of water; and *prima facie*, under such circumstances, every proprietor of land on the banks of such a channel or cut is entitled to that moiety of the bed of the channel which adjoins his land.

WHITMORES (EDENBRIDGE), LD., *v.* STANFORDS, 25 T. L. R. 169; 53 Sol. Jo. 134.—Eve, J.



**Particular Easements—Continued.****(c) Right to Light.**

3. *Acquisition—Adjoining Houses held under Leases from Same Lessor—Effect of Twenty Years' Enjoyment—Surrender of One Lease and Grant of New Lease—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 3.*—Where adjacent buildings are occupied by lessees holding under a common lessor, a right to light may be acquired in respect of one building as against the other. Such right enures in favour of one lessee and his successors against the adjoining lessee and their common landlord.

*Frewen v. Phillips* ((1861), 11 C. B. (N. S.) 449); *Mitchell v. Cantrell* ((1888), 37 Ch. D. 56; 57 L. J. Ch. 72; 36 W. R. 229; 58 L. T. 29), approved and followed; *Colls v. Home and Colonial Stores, Ltd.* ([1904] A. C. 179; 73 L. J. Ch. 484; 53 W. R. 30; 90 L. T. 687; 20 T. L. R. 475—H. L.) explained.

Decision of C. A. ([1906] 2 Ch. 406; 75 L. J. Ch. 787; 95 L. T. 167) affirmed.

*MORGAN v. FEAR*, [1907] A. C. 425; 76 L. J. Ch. [660; 97 L. T. 591—H. L.

4. *Acquisition—Twenty Years' Enjoyment—Computation—Next before Action or Suit—Enjoyment under Written Agreement—Agreement by Tenant—Effect of—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), ss. 3, 4.*—The twenty years' enjoyment during which confers a right to light under the Prescription Act, 1832, must be the twenty years next preceding some action or suit in which the right is called in question.

An agreement in writing entered into and signed by the tenant of the dominant tenement *bona fide* for the purpose of securing the enjoyment of light to that tenement is a sufficient agreement in writing within sect. 3 of the Prescription Act, 1832.

*Simper v. Foley* ((1862), 5 L. T. 669; 2 J. & H. 455) doubted.

Decision of Parker, J. ([1907] 2 Ch. 516; 76 L. J. Ch. 554; 97 L. T. 297) affirmed.

*HYMAN v. VAN DEN BERGH*, [1908] 1 Ch. 167; [77 L. J. Ch. 154; 98 L. T. 478—C. A.

5. *Alteration of Ancient Window—New Window incorporating Part of Ancient Window.*—A person does not, by reducing his ancient window, lose his right to object to a building on his neighbour's land, which he might have objected to before such reduction, unless the building does not seriously affect the reduced window; and the mere closing up of a part of an ancient window does not confer upon the owner of the servient tenement any right to erect a building which he could not lawfully have erected before such reduction, unless he can show that the reduced window will not be affected by such building.

*RICHARD CLARKE & CO. AND GORST v. HORROCKS*, 24 T. L. R. 486—Leigh Clare, V.-C.

6. *Alteration of Dominant Tenement—Abandonment—Inquiry as to Damages—Form of Reference—Prescription Act, 1832 (2 & 3 Will. 4, c. 71).*—The plaintiffs in 1897 altered the front

of their licensed premises, thereby substantially diminishing the amount of light which the business rooms in the house formerly had. The old front was principally of glass and had been put in when the house was built some eighty years ago. In 1904 the plaintiffs brought an action claiming damages for interference with ancient lights caused by new buildings put up by the defendants. The defendants contended, *inter alia*, that but for the alterations in 1897 the new buildings could not have caused an actionable nuisance. Buckley, J., dismissed the action and refused an inquiry. The Court of Appeal ordered an inquiry on the assumption that the plaintiffs had not abandoned any of the ancient lights they enjoyed prior to 1897, as they could, if they wished, restore the old front. On the report of the referee the appeal was dismissed.

HELD—that the plaintiffs must be taken to have abandoned so much of their ancient lights as was lost by the alterations of 1897, but that a reference had been rightly directed as to damages by the Court of Appeal.

*COWPER v. MILBURN*, 52 Sol. Jo. 316—H. L.

7. *Extinction of Prescriptive Right—Unity of Seisin—Unity of Possession—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 3.*—The defendant erected upon his freehold land buildings which interfered with the access of light enjoyed for more than twenty years by an adjoining house. This house has been let on a ten years' lease to the plaintiffs, who commenced an action in respect of the obstruction of their light. Thereupon the defendant bought the freehold of their house.

HELD—that the plaintiffs' action was still maintainable, unity of seisin without unity of possession and enjoyment not extinguishing their right to light.

*RICHARDSON v. GRAHAM*, [1908] 1 K. B. 39; 77 [L. J. K. B. 27; 98 L. T. 360—C. A.

8. *Obstruction—Damages or Injunction—Building Continued After Warning.*—Where building owners had, after warning, seriously impaired the value of a costly building by cutting off its light:

HELD—that the case was not one for damages, but for an injunction.

*BLACK v. SCOTTISH TEMPERANCE LIFE ASSURANCE Co.*, [1908] 1 I. R. 541—H. L.

**(d) Right to Support.**

[No paragraphs in this vol. of the Digest.]

**(e) Various.**

9. *Air—Right to Access of—Grant—Derogation from.*—A right to air through a particular aperture in a building can be acquired against an adjoining tenement just as a right of light.

Where the owner of adjoining plots grants one of them in fee to a purchaser, a right to air in favour of windows in an existing building on the plot granted as against the plot retained by him may be inferred from general words in the conveyance; and if the vendor or a

**Particular Easements—Continued.**

person claiming through him subsequently obstructs the access of air he derogates from this grant.

Such a right may be inferred even if the servient tenement is at the date of the grant subject to a lease.

H. owned a yard, and a stable with ventilators opening on to it. He sold the stable to the plaintiff at a time when the yard was subject to a lease: he then sold the yard to the defendant and the lessee joined in the conveyance to merge the remainder of his term.

**HELD**—that the defendant could not block up the apertures opening on to the yard previously sold to the plaintiff.

**CABLE v. BRYANT**, [1908] 1 Ch. 259; 77 L. J. [Ch. 78; 98 L. T. 98—Neville, J.]

**10. Chimneys—Party-wall owned in Divided Moieties—Flues in Party-wall—Smoke Escaping from Cracks into House—Liability to Repair Wall.**—The plaintiff built a detached house, and on the outside west wall he constructed fireplaces and flues, some for the purpose of his own house, and others on the outer side of the wall for the purpose of being used for any house which might be built adjoining his house. The defendant desired to build a house adjoining the plaintiff's house on the west side, and to make use of the fireplaces and flues for the house, and an agreement was entered into by which the plaintiff sold to the defendant the western half of the outer wall, the wall being treated as divided from top to bottom in two equal halves by a vertical line, the intention being that the wall should be a party-wall owned by the plaintiff and defendant in divided moieties. The vertical line of division passed through the centre of all the chimney flues constructed in the wall, both those connected with the plaintiff's house and those connected with the defendant's house. The defendant erected a house adjoining the plaintiff's house, and used the fireplaces and flues for the purpose thereof. In one of the flues used by the defendant the masonry on the plaintiff's side of the wall became defective, and in consequence the smoke escaped through the cracks in the walls into a room in the plaintiff's house. In an action for an injunction:

**HELD**—that there must be implied in favour of the plaintiff and defendant respectively a reservation and grant of such easements as would be necessary to enable them to use the flues connected with their respective houses, and, apart from either want of reasonable care or from unreasonable user, neither party was liable to the other for nuisance or inconvenience caused by an exercise of the easement; and that neither the plaintiff nor the defendant were liable if smoke escaped into the house of the other through cracks in that other's wall.

**JONES v. PRITCHARD**, [1908] 1 Ch. 630; 77 [L. J. Ch. 405; 98 L. T. 386; 24 T. L. R. 309—Parker, J.]

**ECCLESIASTICAL CHARITY.**

See CHARITIES.

**ECCLESIASTICAL LAW.**

I. CHAPELS . . . . .	COL. 196
[No paragraphs in this vol. of the Digest.]	
II. CHURCH OF ENGLAND.	
(a) Discipline and Ecclesiastical Offences . . . . .	196
(b) Ornaments and Erections in Churches . . . . .	197
III. CHURCHWARDENS . . . . .	197
IV. CLERGY . . . . .	198
[No paragraphs in this vol. of the Digest.]	
V. DILAPIDATIONS . . . . .	198
[No paragraphs in this vol. of the Digest.]	
VI. ECCLESIASTICAL COURTS . . . . .	198
[No paragraphs in this vol. of the Digest.]	
VII. ENDOWMENTS . . . . .	198
VIII. FACULTIES . . . . .	198
IX. FIRST FRUITS AND TENTHS . . . . .	198
[No paragraphs in this vol. of the Digest.]	
X. GLEBE . . . . .	198
[No paragraphs in this vol. of the Digest.]	
XI. TITHE . . . . .	198
See also BURIAL AND CREMATION; RATES (RECTOR'S RATE).	

**I. CHAPELS.**

[No paragraphs in this vol. of the Digest.]

**II. CHURCH OF ENGLAND.****(a) Discipline and Ecclesiastical Offences.**

**1. Repulsion from Holy Communion**—"Open and Notorious Evil Liver"—*Marriage with Deceased Wife's Sister*—*Deceased Wife's Sisters Marriage Act*, 1907 (7 Edw. 7, c. 47), ss. 1, 4.]

—A member of the Church of England, who has married his deceased wife's sister, is not an "open and notorious evil liver" within the meaning of the rubric prefixed to the service of the Holy Communion in the Book of Common Prayer, so as to justify his repulsion from the Holy Communion.

The first proviso in sect. 4 of the *Deceased Wife's Sisters Marriage Act*, 1907, refers to the duties of a clergyman incident to the actual marriage.

**BANISTER v. THOMPSON**, [1908] P. 362; 24 [T. L. R. 841—Dean of Arches.]

**2. Trial under Clergy Discipline Act, 1892—Appeal on Law—Improper Admission of Evidence in Court below—Leave to Appeal on Facts—Fresh Evidence on Appeal—Clergy Discipline Rules, 1892, rr. 68, 69—Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32), ss. 2, 4, 9.**—By r. 69 of the Clergy Discipline Rules, 1892, the appellate Court on any appeal as to the facts under the Act may summon any witness heard at the trial to give evidence with respect to the case, and order any witness not heard at the trial to give evidence with respect to the case.

A defendant who had been adjudged guilty in

**Church of England—Continued.**

the Consistory Court of immoral acts within the provisions of the Clergy Discipline Act, 1892, appealed to the Chancery Court at York in respect of matters of law on the ground, *inter alia*, of the improper admission of evidence in the Court below, and also applied in the same case for leave to appeal on matters of fact.

On the appeal on matters of law, the appellate Court was of opinion that certain of the evidence alleged by the appellant to have been improperly admitted ought to have been excluded, and, on the application for leave to appeal on matters of fact, granted leave to appeal on fact on the ground of such improper admission of evidence, and further directed that under the above rule three witnesses who had given evidence in the Court below should be recalled for examination at the hearing of the appeal, and that another witness not heard in the Court below should also be summoned to give evidence.

CHESNEY *v.* NEWSHOLME, NEWSHOLME *v.* [CHESNEY, [1908] P. 301—York Chan. Ct.]

**(b) Ornaments and Erections in Churches.**

3. *Communion Table—Faculty—Several Tables.*—The Court granted a faculty for the retention in the north chapel of St. Michael, Bromley, of a holy table to be used for the purpose of early services and for Holy Communion for small congregations, on the ground, among others, that there would be a great saving of expense to the church for heating.

A faculty to confirm the placing of a holy table in the aisle of the purpose of enabling the vicar to have Eucharistic services for children was refused.

ST. MICHAEL, BROMLEY, 25 T. L. R. 95—[London Consistory Ct.]

4. *New Communion Table—Steps—Cross and Candlestick—Curtains—Wishes of Parishioners—Vestry Meetings.*—A faculty was granted to a vicar to remove the existing communion table (described as “an ordinary kitchen table”) from a chapel of ease, and to substitute a table raised on two steps above the floor level, with a cross and candlesticks, and with curtains to be fixed behind and at the two ends of it, but not so close as to prevent the minister officiating at the north end of the table.

Observations on the weight to be attached to the wishes of parishioners objecting to lawful ornaments, and on “vestry” meetings as a mode of giving expression to such wishes.

IN RE ST. MARK'S, WIMBLEDON, [1908] P. 167 [—Talbot, K. C., Chancellor.]

**III. CHURCHWARDENS.**

5. *Qualification—Residence—Colourable Occupation—Mandamus.*—K. had been rector's churchwarden in the parish of C. in the year 1906—1907, and was again nominated by the rector for the year 1908—1909. He was a landowner in the parish and had relatives there, with whom he frequently stayed, but until 1908 he had not possessed a residence of his own in the

parish. Objection being taken to his acting as churchwarden without being a resident, he took a small cottage in the parish for six months, from March 25th, 1908. He slept in the cottage, though he had no meals and kept no servants there, but he had the intention of living in the parish and performing his duties as churchwarden.

HELD—on the facts, that the Court ought not to issue a mandamus to the rector to appoint another churchwarden, as K.'s occupation was not a mere colourable one.

R. *v.* TOWNSON AND ANOTHER, 72 J. P. 368; 99 [L. T. 472; 24 T. L. R. 690; 6 L. G. R. 1133—Div. Ct.]

**IV. CLERGY.**

[No paragraphs in this vol. of the Digest.]

**V. DILAPIDATIONS.**

[No paragraphs in this vol. of the Digest.]

**VI. ECCLESIASTICAL COURTS.**

[No paragraphs in this vol. of the Digest.]

**VII. ENDOWMENTS.**

6. *Incumbents' Stipend—Charge on Estate—Presumption of Charge—Long Continued Payment.*—The owner of landed estate in a parish by his will, made in 1769, gave £2,000 to two persons (one of whom succeeded to the estate) to be invested upon trust to pay the income thereof to the vicar of the parish for the time being in augmentation of his stipend. The testator died in 1771, but the £2,000 was never set apart. The owners of the estate, however, continued to pay £60 a year to the vicar for the time being of the parish, and, though a question was suggested on certain occasions that the gift was void under the Mortmain Act, and that the payment of the £60 a year was a voluntary payment, the vicars of the parish claimed it as of right, and the owners of the estate in their succession duty accounts treated it as a charge on the land, and a deduction in respect of the £60 a year was claimed by them and was allowed.

HELD—that the true inference was that the £60 a year was a charge upon the estate to which the vicar of the parish for the time being was entitled.

ROBINSON *v.* SMITH, 24 T. L. R. 573—Eady, J.

**VIII. FACULTIES.**

See II (b), *supra*.

**IX. FIRST FRUITS AND TENTHS.**

[No paragraphs in this vol. of the Digest.]

**X. GLEBE.**

[No paragraphs in this vol. of the Digest.]

**XI. TITHE.**

7. *Commissioners—Overseers—Corporation—City of London (Union of Parishes) Act, 1907* (7 Edw. 7, c. exl.).—4 Geo. 4, c. 118, provides that the churchwarden of the City liberty of St. A. (which has two liberties outside the City), two inhabitant householders of the City liberty who



**Tithe—Continued.**

are overseers, if not Quakers, and ten elected inhabitants shall be commissioners charged with the duty of paying the rector £700 a year in lieu of tithe.

7 Edw. 7, c. exl., provided that certain parishes, including St. A., shall, for purposes other than ecclesiastical, charitable and some other, be formed into one, of which the common council shall be overseers.

HELD—that this does not make the common council a constituent member of the commission, and the churchwarden and elected commissioners can act alone.

WAGSTAFF v. LONDON CORPORATION, 72 J. P. [477; 25 T. L. R. 1; [1908] W. N. 202—Eady, J.

**EDUCATION.**

	COL.
I. IN GENERAL . . . . .	199
II. ENDOWED SCHOOLS ACTS . . . . .	200
III. RELIGIOUS INSTRUCTION . . . . .	201
IV. SCHOOL ATTENDANCE AND CHILD LABOUR . . . . .	202
V. TEACHERS AND OFFICERS.	
(a) Teachers . . . . .	203
(b) Officers . . . . .	203
[No paragraphs in this vol. of the Digest.]	
See also CHARITIES, No. 3; CONTRACT, Nos. 11, 13.	

**I. IN GENERAL.**

1. *Non-Provided Public Elementary School—Reorganisation—Regulation of Secular Instruction—Power of Local Authority to Limit Instruction to Certain Standards—Decision of Board of Education—Jurisdiction of High Court—Education Act, 1902 (2 Edw. 7, c. 42), ss. 7, 16.]*—The West Riding County Council, being the local education authority under the Education Act, 1902, and purporting to act under the powers given them by the Education Acts, 1870—1902, and the Education Code, issued instructions to the managers of a non-provided public elementary school to give no instruction in the said school to any children except children in standards 1, 2, and 3, and infants, and to transfer all other children attending the said school to a new school provided by the said county council. The county council also issued a circular to the parents of children attending the said school, directing them to send such of their children as were in standards 4, 5, 6, and 7, to the said new school instead of to the said non-provided school. The Board of Education, being appealed to by the managers of the said non-provided school and by the said county council, decided that the said directions given by the said county council were *ultra vires* and expedient on educational grounds, and directed the said managers to comply with them.

In an action by the managers and others for a declaration and injunction, it was

HELD—(1) that the directions of the local education authority were *ultra vires* and void as being inconsistent with their duty to “maintain” the school as it was.

And (2) that the jurisdiction of the Court was not ousted by sect. 7, sub-sect. 3, and sect. 16 of the Education Act, 1902.

WILFORD v. WEST RIDING COUNTY COUNCIL, [1908] 1 K. B. 685; 77 L. J. K. B. 436; 72 J. P. 107; 98 L. T. 670; 24 T. L. R. 286; 6 L. G. R. 244; 52 Sol. Jo. 263—Channell, J.

**II. ENDOWED SCHOOL ACTS.**

2. *Church of England Charity—Closing for Want of Funds—Scheme—School Sites Act, 1841 (4 & 5 Vict. c. 38) and 1844 (7 & 8 Vict. c. 37).]*—Land on which a school was subsequently built was conveyed in 1867 to the then minister and chapelwarden of C. upon trust to permit it and all buildings to be erected thereon to be for ever appropriated and used as and for a school for the education of children and adults, and such school was always to be conducted according to the principles of the National Society for Promoting the Education of the Poor in the Principles of the Established Church.

A school was erected and carried on till 1905, when it was closed owing to lack of funds to meet expenses not payable by the local education authority. The building was used as a church institute with a reading room and billiard table, and Sunday school was held there, mothers' meetings, a lads' brigade, a girls' friendly society, and a band of hope occupying the schoolroom during the week. As a result of the closing of the school the county council had to find accommodation for two hundred children. An action was brought to administer the trusts affecting the school with a view to having a scheme settled in chambers and for an injunction restraining the use of the property for unauthorised purposes.

HELD—that a scheme should be directed, but that no application for such scheme should be made for six months, in order to give the managers an opportunity to make an application for leave to re-open.

ATTORNEY-GENERAL v. PRICE, 72 J. P. 208; 24 [T. L. R. 761; 6 L. G. R. 1075—Eady, J.

3. *Scheme framed by Endowed School Commissioners—Alteration of by Scheme of Board of Education—Local Privileges—Modification of—“Due Regard”—Discretion of Board—Jurisdiction—Notice of Scheme—Draft Scheme Altered without Fresh Notice—Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), ss. 11, 28, 45—Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), s. 6—Charitable Trusts Act, 1869 (32 & 33 Vict. c. 110), s. 7—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 14, sub-s. 5.]*—A grammar school, which was founded in 1523, provided under a scheme of the Court of Chancery made in 1841 certain privileges for the inhabitants of two parishes. By subsequent schemes these privileges were to some extent modified, but were still preserved, one-third of the tuition fees being remitted in the case of children

**Endowed School Acts—Continued.**

whose parents were resident in one of the two parishes.

In 1905 the revenues were not sufficient to maintain the school, which was otherwise efficient. The Board of Education consequently, in December, 1905, gave notice in compliance with sect. 6 of the Charitable Trusts Act, 1860, of a proposed new scheme, and in compliance with the provisions of the Local Government Act, 1894, they sent a draft of the scheme to the local bodies affected by it. This scheme preserved the old privileges in the case of parents who had resided in one of the parishes for seven years. It was objected to by the parish councils and remained for a time in abeyance. In March, 1907, another scheme was sealed by the Board without any further notice to the local bodies, and without any further public notice. This scheme abolished all the previous local privileges, but substituted certain other privileges, *i.e.*, preferential claim to admission and to certain scholarships in the case of children of the inhabitants in these places.

The inhabitants presented a petition praying that this scheme might be rescinded or altered or amended on the grounds (1) that the Board had no jurisdiction to alter the scheme in respect of the local privileges, the scheme providing them having the force of an Act of Parliament by virtue of sect. 45 of the Endowed Schools Act, 1869; (2) that the Board had not had due regard to the educational interests of the class of inhabitants within the meaning of sect. 11 of the same Act; (3) that no fresh notice had been given of what was substantially a new scheme, under sect. 6 of the Charitable Trusts Act, 1860, and sect. 7 of the Charitable Trusts Act, 1869; and (4) that no draft of the proposed scheme had been sent to the parish council under sect. 14, sub-sect. 5 of the Local Government Act, 1894.

**HELD**—as to (1), that the Act of 1869 itself provided the power for the Commissioners to alter schemes, it could be so altered by the Board; as to (2), that the Board had, in fact, had due regard to the educational interests of the class; as to (3), that it was within the discretion of the Board to decide whether a fresh notice was necessary or not, and such discretion had been duly exercised; and as to (4), that there was no necessity for the Board to send a draft of the amended scheme under the provisions of the Local Government Act, 1894; that the petition failed, and must be dismissed with costs.

*Seem*, the provisions of sect. 14, sub-sect. 5, of the Local Government Act, 1894, are merely directory.

**IN RE BERKHAMSTED GRAMMAR SCHOOL**,  
[[1908] 2 Ch. 25; 77 L. J. Ch. 571; 72 J. P.  
273; 99 L. T. 147; 24 T. L. R. 514; 6 L. G. R.  
791—Warrington, J.

**III. RELIGIOUS INSTRUCTION.**

**4. Ward of Court—Religious Education—Welfare of the Infant—Religion of Father—Change of Religious Education—Discretion of Court.**—In 1904 the orphan son and daughter of a Jewish father, then aged respectively ten

and eight years, were directed by a Judge to be brought up in their father's religion, and were placed in a Jewish household. In 1907 the boy wrote to his guardian that he no longer wished to be educated as a Jew. The Judge, to whom this letter was sent, after interviews with the boy and further inquiries, came to the conclusion that the welfare of the boy called for a change in his religious education, and he accordingly made an order that both infants should be thenceforth brought up in the Christian religion.

**HELD**—that it would be morally injurious to the welfare of the boy not to give effect to his wishes, but that there was no evidence to justify any order changing the religious education of the girl.

In all orders relating to the religious education of a ward of Court the words "until further order" are deemed to be inserted.

**IN RE W.**, *W. v. M.*, [1907] 2 Ch. 557; 77 L. J.  
[Ch. 147—C. A.]

**IV. SCHOOL ATTENDANCE AND CHILD LABOUR.**

**5. Attendance—Neglecting to Cause Attendance of Child at School—Day Exclusively Set Apart for Religious Observance—Ascension Day—Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 7, sub-s. 1, and s. 74, sub-ss. 1, 2.**—The appellant in the first case was summoned for neglecting, without lawful excuse, to cause his child, aged eleven and a half years, to attend school for the whole time required by the bye-laws made by the county council of the West Riding of Yorkshire as the education authority under Part III. of the Education Act, 1902. Bye-law 4 (b) provided that nothing in the bye-laws should require any child to attend school on any day exclusively set apart for religious observance by the religious body to which its parent belongs. Sect. 7, sub-sect. 1, of the Education Act, 1870, contains a similar provision. On May 24th, 1906, being Ascension Day, the child was wholly absent from school in the morning; he attended church in the morning and attended school in the afternoon. The appellant, who belonged to the Church of England, stated in evidence that it was in accordance with his direction that the child attended church in the morning and went to school in the afternoon. The Justices came to the conclusion that May 24th, 1906, was not a day exclusively set apart for religious observance by the religious body to which the appellant belonged in the sense contemplated by the bye-law and sect. 7, sub-sect. 1, of the Education Act, 1870, and they convicted the appellant.

In the second case the facts were similar, except that the child was wholly absent from school both in the morning and in the afternoon, and the appellant stated in evidence that he was a member of the Church of England, and that it was by his direction that the child did not attend school that day, but attended church in the morning and stayed at home the rest of the day. The Justices were not satisfied that the appellant was a member of the Church of England, and they came to the same conclusion

**School Attendance and Child Labour—Continued.**

as in the previous case, and convicted the appellant.

**HELD**—that Ascension Day was a day exclusively set apart for religious observance by the Church of England within the meaning of the bye-law and statute, that on the evidence the appellants in both cases were members of the Church of England, and that both convictions were, therefore, wrong, and must be quashed.

*Quære*—whether a withdrawal of the child for the whole day would be justified.

**MARSHALL v. GRAHAM, BELL v. GRAHAM.**  
[[1907] 2 K. B. 112; 76 L. J. K. B. 690; 71 J. P. 270; 97 L. T. 52; 23 T. L. R. 435; 5 L. G. R. 738; 21 Cox, C. C. 461—Div. Ct.]

**6. Employment of Child—"Employment"—What Is—Invalid Child allowed to Amuse Himself by Working in Father's Smithy—Elementary Education Act, 1876 (39 & 40 Vict. c. 79), ss. 6, 47.]** A father who on the advice of his doctor allows his son, a boy aged thirteen years and subject to fits, to endeavour to assist him in the way of his trade, by doing light work whenever the boy is so minded, and who makes no gain thereby, does not employ the boy within the meaning of sect. 47 of the Elementary Education Act, 1876, and therefore commits no offence within that section.

**R. v. AUSTIN AND OTHERS,** 71 J. P. 29; 96 L. T. 29; 5 L. G. R. 126; 21 Cox, C. C. 347—Div. Ct.]

**V. TEACHERS AND OFFICERS.****(a) Teachers.**

**7. Corporal Punishment—Public Elementary School—Assistant Mistress Taking Large Class—Punishment of Child by, Contrary to Regulations of Education Committee—Action for Assault.]**—An assistant mistress taking a large class in a public elementary school, provided by an education committee, who administers corporal punishment to one of her pupils, can justify in an action for assault, brought on behalf of the child, if she proves that the punishment was moderate, was not dictated by a bad motive, was such as is usually administered in schools, and such as the parent might expect his child to receive, although the regulations of the education committee provide that corporal punishment may only be administered by certain other teachers, and that such punishment may only be inflicted with an instrument other than that used by her.

Order that county court judge should consider whether to grant a new trial.

**MANSSELL v. GRIFFIN,** [1908] 1 K. B. 160; 72 J. P. 6; 98 L. T. 51; 24 T. L. R. 67—Div. Ct.]

Order affirmed, without any expression of opinion on the above point of law ([1908] 1 K. B. 947; 77 L. J. K. B. 676; 72 J. P. 179; 99 L. T. 132; 24 T. L. R. 431; 52 Sol. Jo. 376; 6 L. G. R. 548) C. A.

**(b) Officers.**

[No paragraphs in this vol. of the Digest.]

**EDUCATION ACTS.**

*See* CHARITIES; EDUCATION.

**EJECTMENT.**

*See* LANDLORD AND TENANT.

**ELECTION.**

*See* WILLS.

**ELECTIONS.**

I. DISQUALIFICATION . . . . .	COL. 204
II. THE ELECTION . . . . .	204
III. ILLEGAL PRACTICES . . . . .	206
IV. LODGER VOTES . . . . .	207
V. PETITION . . . . .	207
[No paragraphs in this vol. of the Digest.]	
VI. OCCUPATION VOTERS . . . . .	207
VII. OWNERSHIP VOTERS . . . . .	209
[No paragraphs in this vol. of the Digest.]	
VIII. REVISING BARRISTERS . . . . .	209
[No paragraphs in this vol. of the Digest.]	
IX. SERVICE FRANCHISE . . . . .	210
X. MISCELLANEOUS . . . . .	210

**I. DISQUALIFICATION.**

*See also* LOCAL GOVERNMENT, No. 11.

**1. Corrupt Practice by Agents—Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 6, sub-s. 3A, s. 38, sub-s. 5—Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), ss. 2, 3, sub-s. 2, s. 23.]**—Sect. 6, sub-sect. 3A, and sect. 38, sub-sect. 5, of the Corrupt and Illegal Practices Prevention Act, 1883, which are applied to municipal elections by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, ss. 2, 23, apply to the case of a candidate being reported by the election court for a corrupt practice committed by him personally or with his knowledge and consent, but do not apply to the case of a candidate reported for a corrupt practice by his agents without his knowledge and consent. Therefore in the latter case the candidate is not disentitled to be put on the register for the period of seven years.

**MORRIS v. TOWN CLERK OF SHREWSBURY,** 126 L. T. Jo. 8—Div. Ct.]

**II. THE ELECTION.**

**2. Ballot Papers—What Mark Amounts to a Valid Vote—Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. II.]**—A mark or indentation made apparently by a pencil with the lead broken off



**The Election—Continued.**

is sufficient to indicate an intention to vote for the candidate in whose compartment it appears.

A cross, the intersection of which is in the top margin of the ballot paper, but the ends of which are just within the compartment of one of two candidates, is a valid vote for that candidate.

A cross in one candidate's compartment is a valid vote for him, although there is also a straight line in the other candidate's compartment.

OLDHAM ELECTION: COOPER *v.* OGDEN, 72 [J. P. 115; 24 T. L. R. 242; 52 Sol. Jo. 192; 6 L. G. R. 373—Div. Ct.]

**3. Irregularities in Conduct of Election—Ballot Boxes—Spare Boxes Not Sealed at Opening of Poll—Mixing and Counting of Ballot Papers.**—[At an urban district council election there were, prior to the opening of the poll, two supplemental ballot boxes on the premises, one in charge of a presiding officer and one in the custody of the returning officer. They were not opened or shown to be empty before the opening of the poll, but each, before being brought into use when the other boxes were filled, was opened, shown to be empty, and sealed.]

The returning officer did not count or record the number of ballot papers in each box, or mix the whole of the ballot papers before counting; but this was omitted with the approval and assent of the agents for all the candidates.

HELD—that though these were breaches of the rules in Sched. I. to the Ballot Act, they did not violate any principle laid down in the body of the Act, and were not sufficient to avoid the election.

IN RE PEMBROKE ELECTION PETITION (No. 2), [[1908] 2 I. R. 433—K. B. D.]

**4. Irregularities in Conduct of Election—Excessive Number of Polling Agents—Several Tables at Each Polling Station.**—[At an urban district council election there were twenty-nine candidates for fifteen vacancies. The returning officer, in a circular to the candidates, stated that there were two polling stations; but there were, in fact, ten tables, at which ballot papers were given out and stamped by assistants, appointed by the returning officer with the approval and being under the control of the officer presiding at each table. The agent of the successful candidates lodged with the returning officer in due time a form of nomination, signed by eight of the candidates, naming ten agents for attendance on their behalf on the polling day. The unsuccessful candidates were informed of the nomination of the ten agents, and they requested the returning officer to allow them to appoint a like number, to which he agreed. They had, in fact, seven agents. The Commissioner who tried the election petition found as facts that the agent for the successful candidates, in nominating ten polling agents, *bona fide* believed that he was entitled to do so; that the returning officer, in accepting the nomination, and in permitting each side to have ten agents, was actuated by a *bona fide*

desire to convenience and facilitate all parties; and that all the arrangements made by the returning officer for the election were made by him with a *bona fide* desire to facilitate electors in voting, and to prevent confusion and delay, and in the Commissioner's opinion they did so operate.]

The Commissioner was of opinion, and found as facts the following: (a) At the polling every elector who attended had full opportunity of recording his or her vote; (b) the election was conducted in accordance with the principles contained in the body of the Ballot Act, 1872, and of the Local Government (Ireland) Act, 1898; (c) if any of the matters complained of by the petitioners were or was a non-compliance with, or a non-observance of, or a departure from, any of the requirements of or under the rules or the forms in the schedule to the Ballot Act, 1872, or of or under the rules of the Election Order of December 22, 1898, the same or any of them did not in any way affect the result of the election.]

HELD—that the election should not be avoided.

IN RE PEMBROKE ELECTION PETITION, [1908] 2 I. R. 433—K. B. D.]

**III. ILLEGAL PRACTICES.**

**5. Appeal against Report of Election Commissioners—Recognizances—Onus Probandi—Locus Standi of Directors of Public Prosecutions—Payments made to Voters after Voting without Previous Promise—Functions of Election Petition—Judges and Election Commissioners.**—[An appeal to assizes by a person reported guilty of illegal and corrupt practices is governed by the procedure (*e.g.*, as to recognizances) applicable to an appeal to sessions against a conviction.]

The *onus* is on the respondents to prove a *prima facie* case, and this they may do by reading the report and evidence subjoined thereto.

If the Election Commissioners do not appear as respondents, the Public Prosecutor may bring the report and evidence before the Court.

A person who makes payments to voters after they have voted cannot be convicted of bribery without evidence to connect such payments with a previous promise or understanding.

*Brecon Case* ((1871), 2 O'M. & H. 43) followed. The functions of Election Petition Judges and Election Commissioners being different, a finding by the former as to the non-committal of illegal practices does not bind the latter.

CALDICOTT *v.* WORCESTER ELECTION COMMISSIONERS, 21 Cox, C. C. 404—Bigham, J.]

**6. Prosecution for Personation and Improper Dealing with Ballot Papers—Inspection and Production of Ballot Papers.**—[A prosecution having been instituted against a presiding officer at a county borough election for personation and other offences against the Ballot Act, 1872, as adapted by an "election order," the Court made an order directing the returning officer at the election to produce and show to the Crown solicitor rejected ballot papers, counted ballot papers, spoiled ballot papers, the

**Illegal Practices—Continued.**

counterfoils thereof marked by the presiding officer at the polling station, and the marked copy of the register used at the polling station.

The Court also gave leave to issue a *subpœna duces tecum* directed to the returning officer to produce the said documents at the trial or any adjournment thereof.

R. v. QUINLAN, [1908] 2 I. R. 155—Kenny, J.

**IV. LODGER VOTES.**

And see Nos. 8, 9, *infra*.

7. *Lodger Claim by Son of Landlord—Evidence Rebutting Prima Facie Evidence—Parliamentary and Municipal Registration Act, 1878* (41 & 42 Vict. c. 26), s. 23.]—In a claim to vote as a lodger the claimant set out his name, the description of the rooms occupied by him, the amount of rent paid and the name and address of the person to whom he paid rent, the surname of the latter being the same as the claimant's. No formal objection was made to the claim. The revising barrister, having ascertained that the claimant was the son of his alleged landlord, held that the relationship rebutted the *prima facie* evidence of qualification furnished by the declaration annexed to the claim under sect. 23 of the Parliamentary and Municipal Registration Act, 1878.

HELD—that there was no evidence to rebut the *prima facie* evidence of the declaration, and that the claim ought to have been allowed.

MAJOR v. TOWN CLERK OF SHREWSBURY, 126 [L. T. Jo. 32—Div. Ct.]

**V. PETITION.**

[No paragraphs in this vol. of the Digest.]

**VI. OCCUPATION VOTERS.**

8. *Lodger or Occupier—Objection to Voter—Prima facie Proof—“Evidence, Repute or Otherwise”—“Repute,” when may be Acted On—Remitting Case to Revising Barrister—Parliamentary and Municipal Registration Act, 1878* (41 & 42 Vict. c. 26), s. 28 (10).]—By sect. 28 (10) of the Parliamentary and Municipal Registration Act, 1878: “If the objector so appears the revising barrister shall require him, unless he is an overseer . . . to give *prima facie* proof of the ground of objection . . . and unless such proof is given to his satisfaction shall, subject as herein and otherwise by law provided, retain the name of the person objected to. . . . The *prima facie* proof shall be deemed to be given by the objector if it is shown to the satisfaction of the revising barrister by evidence, repute, or otherwise that there is reasonable ground for believing that the objection is well founded, and that by reason of the person objected to not being present for examination, or for some other reason the objector is prevented from discovering or proving the truth respecting the entry objected to.”

HELD—that a revising barrister may act upon repute in aid of the objector in the circumstances mentioned in the sub-section, but that he may

not act upon repute for the purpose of defeating an objection.

A revising barrister having acted upon repute in disallowing objections to the retention of certain names upon the occupiers' list of voters for a borough, the Court, upon a case stated, remitted the matter to the revising barrister to continue the revision as to the names objected to, although the time in which the lists should have been revised had expired.

KENT v. FITTALL, [1908] 2 K. B. 933; 77 L. J. [K. B. 1065; 72 J. P. 421; 24 T. L. R. 665, 830; 52 Sol. Jo. 534, 714; 6 L. G. R. 672, 1047; 2 Smith, 63—Div. Ct. and C. A.]

9. *Lodger or Occupier—Objection to Voter—Prima facie Proof—Evidence of Mode of Occupation in Borough—Parliamentary and Municipal Registration Act, 1878* (41 & 42 Vict. c. 26), s. 28, sub-s. 10.]—Objection was taken to the retention of the names of a number of persons on the occupiers' list of voters for a borough, and in support thereof the objector proved as to each of these persons (1) that the dwelling-house in respect of which he claimed to be placed on the list formed part of a house which was itself an ordinary dwelling-house; (2) that the landlord to whom such person paid rent also resided in the house; and (3) that the landlord was rated and paid the rates for the whole house as a separate tenement. The revising barrister thereupon took evidence upon oath from the assistant overseer and registration clerk which showed that in the particular borough it was usual in the case of such occupations for the occupant to have the free and exclusive use of the tenement, and that the landlord's residence in the house was under identically the same conditions as that of the occupant or occupants. Upon that evidence the revising barrister held that it had not been shown to his satisfaction that the objector had given *prima facie* proof of the ground of objection within sect. 28, sub-sect. 10, of the Parliamentary and Municipal Registration Act, 1878, and the revising barrister accordingly retained the names of the persons objected to on the list.

HELD, on a case stated—that the revising barrister was not entitled to act on the evidence which had been given as to the usual mode of occupation of tenement houses in the particular borough; that he must deal with the cases of the particular persons objected to; and, accordingly, that the case must go back to the revising barrister in order that he might complete the revision.

KENT v. FITTALL (No. 2) 25 T. L. R. 41; 53 [Sol. Jo. 48—Div. Ct.]

10. *Occupation under a Letting Void at Law.*]—The Court will not investigate questions of title in registration cases where there is a *de facto* occupation such as would entitle the occupier to the franchise.

ROULSTON v. KERLIN, [1908] 2 I. R. 335—C. A.

11. *Separate Dwelling House—Exclusive Occupation.*]—A claimant for an occupation vote occupied the lower portion of a dwelling-house,



**Occupation Voters—Continued.**

including a bedroom, sitting-room, and kitchen, as a separate dwelling-house. The upper portion was occupied by another person as a separate dwelling-house. The latter could not have access to his rooms except by means of the stairs leading from the kitchen. The distance between the door opening into the kitchen and the bottom of the stairs was short, and evidence was given to show that it might be possible for a person to reach the bottom of the stairs without walking over the floor of the kitchen. The revising barrister found as a fact that the claimant occupied the lower portion of the dwelling-house, including the bedroom, sitting-room, and kitchen, as a separate dwelling-house; that the upper portion of the same house was occupied by another person as a separate dwelling-house; and that the person occupying the upper portion could not have access thereto except by means of the stairs which entered into the kitchen occupied by the voter. He also found as a fact that no person could reach the upper portion of the building without passing through the kitchen.

**HELD** (Fitzgibbon, L. J., dissenting)—that the claimant was in fact in exclusive occupation of the lower portion of the house, and was not entitled to the franchise.

**M'BRIDE v. BRYANS**, [1908] 2 I. R. 329—C. A.

**12. Successive Occupation—Second Dwelling House not Rated**—Representation of the People Acts, 1832 (2 & 3 Will. 4, c. 45), s. 30; and 1867 (30 & 31 Vict. c. 102), s. 3—*Parliamentary Electors Registration Act*, 1868 (31 & 32 Vict. c. 58), s. 30.—P. occupied, during the whole of the qualifying period, in immediate succession two houses in Torquay, and had been duly rated and had paid all rates in respect of the first house. He entered into occupation of the second house in June, but as at the time of the making of the then current rate the second house was unfinished, he was not rated in respect thereof, nor was any other person rated in respect thereof, between the commencement of P.'s occupation and the termination of the qualifying period. No claim to be rated in respect of the said second house was made by P., nor did he make any tender or payment under sect. 30 of the Representation of the People Act, 1832, or sect. 30 of the Parliamentary Electors Registration Act, 1868, of the sum which would have been due had he been rated. The revising barrister held that P. was not entitled to have his name on the occupiers' list, and expunged his name therefrom.

**HELD**—that, as the house in question was not on the rate book during the qualifying period, P. was not entitled to the franchise.

**PITTS v. MICHELMORE**, 25 T. L. R. 56; 53 Sol. [Jo. 62—Div. Ct.]

**VII. OWNERSHIP VOTERS.**

[No paragraphs in this vol. of the Digest.]

**VIII. REVISING BARRISTERS.**

[No paragraphs in this vol. of the Digest.]

**IX. SERVICE FRANCHISE.**

**13. Bedroom Occupied by Coachman—Coachman obliged to take Meals in House**—Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 3.—A coachman occupied a room over his master's stable, no part of the building which contained the stable and room being inhabited by the master. As part of the terms of his service the coachman was required to, and did in fact, take his meals with his master's other servants in the house which was inhabited by his master.

**HELD**—that the coachman inhabited the room as a dwelling-house by virtue of his service within sect. 3 of the Representation of the People Act, 1884, so as to entitle him to be on Division 2 of the list of voters.

*Stribling v. Hulse* ((1886), 16 Q. B. D. 246; 55 L. J. Q. B. 15; 49 J. P. 727; 54 L. T. 268—Div. Ct.) followed.

**LASKEY v. MICHELMORE**, 71 J. P. 559; 98 L. T. [105; 24 T. L. R. 61; 6 L. G. R. 74; 2 Smith, 63—Div. Ct.]

**X. MISCELLANEOUS.**

**14. Scotch University—Women Graduates—Right to Vote**—Representation of the People (Scotland) Act, 1868 (31 & 32 Vict. c. 48), s. 27—*Universities (Scotland) Act*, 1889 (52 & 53 Vict. c. 55).—Women graduates of Edinburgh and St. Andrews Universities are not entitled to the Parliamentary franchise.

Decision of Ct. of Sess. ([1908] S. C. 113) affirmed.

**NAIRN v. UNIVERSITY COURT OF UNIVERSITY** [OF ST. ANDREWS AND OTHERS, 25 T. L. R. 160; [1908] W. N. 250—H. L.]

**ELECTRIC LIGHTING, TRACTION, AND POWER.**

COL. I. CONTRACT FOR SUPPLY . . . 210

II. GENERALLY . . . 211

[No paragraphs in this vol. of the Digest.]

And see HIGHWAYS.

**I. CONTRACT FOR SUPPLY.**

**1. Construction of—Charges**—"Actual cost"—"Generating the Light."—The plaintiffs agreed to supply electric light in B. to the inhabitants, streets, public places, and private property. To carry out the work they were to do certain specified things and to provide every thing necessary, although not specified, to supply the light to the street lamps. The defendants were to pay them such a sum as would yield a return of 10 per cent. over the "actual cost of generating the light."

**HELD**—that "actual cost" included depreciation of plant, rent, rates and taxes, and insurance, and that "generating the light" included



**Contract for Supply—Continued.**

the whole process leading up to the production of the light in the street lamps.

**BULUWAYO MUNICIPALITY v. BULUWAYO**  
[**WATERWORKS Co., LD.,** [1908] A. C. 241;  
77 L. J. P. C. 70; 98 L. T. 600—P. C.]

2. *Failure to Supply—Remedy—Penalty Clause—Action for Damages—Right to Maintain—Loughborough Corporation Act, 1899* (62 & 63 Vict. c. xcvi.) s. 62.]—The defendants were empowered by the Loughborough Corporation Act, 1899, to supply electrical energy. The Act imposed upon the defendants an obligation to supply energy to owners and occupiers of premises within the area of supply upon being required so to do, and sect. 62 provided that "whenever the undertakers make default in supplying energy to any owner or occupier of premises to whom they may be and are required to supply energy . . . they shall be liable . . . to a penalty . . ." Penalties were recoverable summarily in manner provided by the Summary Jurisdiction Acts.

Sect. 65 of the Act empowered the defendants to make agreements as to the price to be charged for energy. Under the power conferred by that section they entered into an agreement to supply energy to the plaintiffs, who were not persons entitled to demand a supply, for a certain period at certain prices. The defendant failed to supply such energy, and the plaintiffs thereupon brought an action in the High Court to recover damages for breach of the agreement.

**HELD**—that the penalty section did not debar the plaintiffs from bringing an action for damages for breach of the agreement.

Decision of Bigham, J. (71 J. P. 10; 5 L. G. R. 269) reversed.

**HERBERT MORRIS AND BASTERT, LD. v.**  
[**LOUGHBOROUGH CORPORATION,** [1908] 1  
K. B. 205; 77 L. J. K. B. 91; 71 J. P. 521; 98  
L. T. 269; 6 L. G. R. 55—C. A.]

**II. GENERALLY.**

[No paragraphs in this vol. of the Digest.]

**EMBEZZLEMENT.**

See CRIMINAL LAW AND PROCEDURE.

**EMBLEMENTS.**

See LANDLORD AND TENANT; REAL PROPERTY.

**EMIGRATION.**

See SHIPPING AND NAVIGATION.

**EMPLOYERS' LIABILITY.**

See MASTER AND SERVANT.

**ENDOWMENT.**

See CHARITIES; ECCLESIASTICAL LAW.

**EQUITABLE ASSIGNMENT.**

See CHOSSES IN ACTION; MORTGAGES.

**EQUITY.**

	COL.
I. UNCONSCIONABLE BARGAINS . . .	212
II. UNDUE INFLUENCE . . .	212

**I. UNCONSCIONABLE BARGAINS.**

See MONEY AND MONEYLENDERS.

**II. UNDUE INFLUENCE.**

See also CONTRACTS, Nos. 19, 20; HUSBAND AND WIFE, No. 52; MISREPRESENTATION AND FRAUD; SOLICITORS, No. 2.

1. *Husband and Wife—Guarantee by Wife—Guaranteeing Husband's Trade Debt—Document not Explained to Her—Husband Procuring Execution—Creditor Suing on Guarantee.*—Merchants agreed to supply trade goods to B. on credit, if his wife would guarantee payment, and they sent to B. a form of guarantee leaving it entirely to him to obtain his wife's signature. He obtained her signature without sufficiently explaining to her the nature of the document, which she did not in fact understand.

**HELD**—that an action on the guarantee could not be maintained.

*Bischoff's Trustee v. Frank* ((1903), 89 L. T. 188—Wright, J.) and *Turnbull & Co. v. Dural* ([1902] A. C. 429; 71 L. J. P. C. 84; 87 L. T. 154; 18 T. L. R. 521—P. C.) followed.

**CHAPLIN & Co., LD. v. BRAMMALL,** [1908]  
[1 K. B. 233; 77 L. J. K. B. 366; 97 L. T.  
860—C. A.]

2. *Husband and Wife—Joint and Several Promissory Note—Wife's Signature Obtained by Influence of Husband—No Presumption of Undue Influence—Burden of Proof—Laches.*—In an action on a promissory note a defendant pleaded that her signature had been obtained under duress by her husband, the other defendant. The jury found that her signature was obtained by the influence of her husband, but not by duress or fraud. On the question of undue influence they could not agree. They also found that the substance of the transaction was sufficiently explained to the wife.

**HELD**—that there was no presumption of law that a transaction between husband and wife could not stand unless the fullest negative evidence was given that there was nothing improper in it; that in this case therefore the burden of proof was not on the plaintiff.

Undue Influence—Continued.

HELD FURTHER—that the female defendant had been guilty of *laches*, inasmuch as she had refrained from any intimation to the plaintiff that her signature was improperly obtained.

HOWES v. BISHOP AND WIFE (1908), 25 T. L. R. [171—Jelf, J.

ESTATE AGENT.

See AGENCY; AUCTIONS AND AUCTIONEERS; SALE OF LAND; VALUERS AND APPRAISERS.

ESTATE DUTY.

See DEATH DUTIES.

ESTATE TAIL.

See REAL PROPERTY.

ESTOPPEL.

See ARBITRATION; BANKERS; BANKRUPTCY; BILLS OF EXCHANGE, No. 6; BILLS OF SALE; EXECUTORS; FRAUDULENT CONVEYANCES; INSURANCE; INTOXICATING LIQUORS; JUDGMENT, No. 2; MASTER AND SERVANT; MORTGAGES; PATENTS; TRADE MARKS.

EVIDENCE.

I. IN GENERAL.

(a) Admissibility . . . . .	214
(b) Affidavits . . . . .	214
[No paragraphs in this vol. of the Digest.]	
(c) Miscellaneous . . . . .	214

II. DOCUMENTS.

(a) In General . . . . .	215
(b) Certificates . . . . .	215
[No paragraphs in this vol. of the Digest.]	
(c) Entries in Books, Reports, etc. .	215
[No paragraphs in this vol. of the Digest.]	
(d) Public Documents . . . . .	216

III. PERPETUATING TESTIMONY . . . . . 216  
[No paragraphs in this vol. of the Digest.]

IV. PRESUMPTION.

(a) Of Death . . . . .	216
(b) Generally . . . . .	216

See also ADMIRALTY; AGENCY; ANIMALS; BAILMENT; BANKERS BANKRUPTCY;

BASTARDY; CONTRACT; CRIMINAL LAW, No. 8; DIGNITIES, No. 1; EXECUTORS; HIGHWAYS; HUSBAND AND WIFE; INTOXICATING LIQUORS; JUDGMENT; MASTER AND SERVANT; PRACTICE AND PROCEDURE; TRUSTS AND TRUSTEES, No. 8A.

I. IN GENERAL.

(a) Admissibility.

1. *Negligence—Single Act of Negligence Alleged—Course of Conduct—Evidence as to Similar Acts.*—The plaintiff alleged that a barber by using dirty and insanitary razors had imparted to him a contagious disease. He tendered two witnesses to prove that they had contracted a similar disease from the defendant's razors.

HELD—that the evidence was admissible, as the plaintiff alleged a dangerous practice on the part of the defendant, and not merely an isolated act.

HALES v. KERR, [1908] 2 K. B. 601; 77 [L. J. K. B. 870; 99 L. T. 364; 24 T. L. R. 779—Div. Ct.

1a. *Previous Compromise of All Matters in Controversy—Events Prior to Compromise—Evidence Inadmissible to Show Intent—Finality of Compromise.*—Where there has been a long financial struggle between two parties, in the course of which an agreement of compromise as to all matters then in controversy has been entered into by the two parties, and it is not sought to set aside the compromise on the ground of fraud or otherwise, evidence as to matters in controversy and events prior to the compromise, intended to show a "wicked mind," is not admissible at the trial of an action brought by one party to the compromise, alleging conspiracy, against the other party for damages incurred since the compromise.

WYLER AND THE IBO AND NYASSA CORPORATION v. LEWIS AND OTHERS, *Times*, December 22nd, 1908—C. A.

(b) Affidavits.

[No paragraphs in this vol. of the Digest.]

(c) Miscellaneous.

2. *Subpoena duces tecum—Disobedience—Meaning of Word "Document"—Sealed Packet—Deposit with Banker—Duty of Banker.*—For the purposes of a subpoena duces tecum a sealed packet may be a "document." The fact that a document has been deposited with a bank by two persons on the terms that it is not to be given up without the consent of both is no answer to a subpoena served on an officer of the bank to produce the document before a magistrate in a criminal proceeding.

The Court may enforce obedience to a subpoena duces tecum by attachment, even though the disobedience is not wilful.

**In General—Continued.**

*R. v. Lord John Russell* ((1839), 7 Dowl. P. C. 693) explained.

*R. v. DAYE*, [1908] 2 K. B. 333; 77 L. J. K. B. [659; 72 J. P. 269; 99 L. T. 165—Div. Ct.]

**3. Practice — Commissioner — Shorthand Writer.**—It is not a proper practice to appoint a shorthand writer as commissioner to take evidence on commission.

*BICKNELL v. BICKNELL*, [1908] W. N. 97—C. A.

**4. Witnesses—Oath—Witness Desiring to be Sworn on his Own Testament—Oaths Act, 1838** (1 & 2 Vict. c. 105).—A county court judge refused to allow a witness who was a doctor to be sworn on a book which he produced, and which he stated was a Testament, holding that if the doctor preferred not to kiss the Court Testament, he might take the oath in the Scotch form.

Per Phillimore, J., the county court judge could have compelled the witness to take the oath in one of these two ways by exercising his powers as to contempt of Court.

*RABEY v. BIRCH*, 72 J. P. 106—Div. Ct.

**II. DOCUMENTS.****(a) In General.**

**5. Bankers' Books — Inspection — Power of Magistrate to Make Order — Bankers' Books Evidence Act, 1879** (42 & 43 Vict. c. 11), ss. 7, 10].—A magistrate has power to make an order for the inspection of a banker's book under sect. 7 of the Bankers' Books Evidence Act, 1879.

*R. v. Bradlaugh* ((1883), 15 Cox, 222 n.—dictum of Coleridge, J.) not followed.

*R. v. KINGHORN AND ANOTHER*, [1908] 2 K. B. [949; 72 J. P. 478—Div. Ct.]

**6. Photographs of Documents — Admissibility of.**—The use and admissibility of photographs as evidence of written documents considered in a libel action, where the letter complained of was lost after having been photographed, and it was sought to use the photograph for comparison of handwritings.

*M'CULLOUGH v. MUNN*, [1908] 2 I. R. 194—[C. A.]

**7. Publication Against Public Interest—Statement by Head of Department.**—Where the head of a Government department states at the trial of an action that the production of a particular document by the department would be injurious to the public interest, the Judge ought not to order its production.

*WILLIAMS v. STAR NEWSPAPER CO.*, 24 T. L. R. [297—Darling, J.]

**(b) Certificates.**

[No paragraphs in this vol. of the Digest.]

**(c) Entries in Books, Reports, etc.**

[No paragraphs in this vol. of the Digest.]

**(d) Public Documents.**

See No. 7, *supra*.

**III. PERPETUATING TESTIMONY.**

[No paragraphs in this vol. of the Digest.]

**IV. PRESUMPTION.****(a) Of Death.**

See EXECUTORS, NOS. 13, 14.

**(b) Generally.**

See ECCLESIASTICAL LAW, No. 6.

**EXCISE.**

See INTOXICATING LIQUORS.

**EXECUTION.**

See BANKRUPTCY; COUNTY COURTS, Nos. 8, 9; INTERPLEADER; LUNATICS; PRACTICE AND PROCEDURE; SHERIFFS AND BAILIFFS.

**EXECUTORS AND ADMINISTRATORS.**

COL.

I. EXECUTORS GENERALLY . . . 217

II. GRANT OF LETTERS OF ADMINISTRATION.

(a) Administration Bonds . . . 218

(b) As on an Intestacy . . . 219

[No paragraphs in this vol. of the Digest.]

(c) Citation . . . 219

[No paragraphs in this vol. of the Digest.]

(d) Creditors . . . 219

[No paragraphs in this vol. of the Digest.]

(e) Crown's Rights . . . 219

(f) *Cum Testamento Annexo* . . . 219

[No paragraphs in this vol. of the Digest.]

(g) *De Bonis Non* . . . 219

[No paragraphs in this vol. of the Digest.]

(h) Foreigners . . . 219

(i) Limited Grants . . . 219

[No paragraphs in this vol. of the Digest.]

(k) Passing Over . . . 219

[No paragraphs in this vol. of the Digest.]

(l) Presumption of Death of Next of Kin . . . 219

[No paragraphs in this vol. of the Digest.]

(m) Renunciation by Next of Kin . . . 220

[No paragraphs in this vol. of the Digest.]

(n) Revocation of Grant . . . 220

[No paragraphs in this vol. of the Digest.]



**Executors and Administrators—Continued.**

III. PROBATE.	COL.
(a) Costs . . . . .	220
(b) Effect . . . . .	220
[No paragraphs in this vol. of the Digest.]	
(c) Executor according to the Tenor . . . . .	220
(d) Executor Misdescribed . . . . .	220
[No paragraphs in this vol. of the Digest.]	
(e) Foreign Wills . . . . .	220
(f) Lost Will . . . . .	220
(g) Practice . . . . .	220
(h) Revocation of Probate . . . . .	221
[No paragraphs in this vol. of the Digest.]	
IV. PAYMENT OF DEBTS AND DISTRIBUTION OF ASSETS.	
(a) Conveyance of Real Estate . . . . .	221
(b) Insolvent Estate . . . . .	222
(c) Payment of Debts . . . . .	222
(d) Payment of Legacies . . . . .	223
(e) Possible Future Liabilities . . . . .	223
[No paragraphs in this vol. of the Digest.]	
(f) Right of Retainer . . . . .	224
[No paragraphs in this vol. of the Digest.]	
(g) Testamentary Expenses . . . . .	224
V. POWERS AND LIABILITIES OF EXECUTORS AND ADMINISTRATORS.	
(a) Carrying on Business . . . . .	224
[No paragraphs in this vol. of the Digest.]	
(b) Liabilities . . . . .	224
(c) Powers . . . . .	224
[No paragraphs in this vol. of the Digest.]	
VI. ACTION FOR ADMINISTRATION . . . . .	225
See also ACTION; BANKRUPTCY; CHARITIES; COMPANIES, No. 37; CONFLICT OF LAWS; DEATH DUTIES; DESCENT AND DISTRIBUTION; FRIENDLY SOCIETIES; LIMITATION OF ACTIONS, Nos 4, 5; MORTGAGES; PRACTICE AND PROCEDURE; SALE OF LAND; TRUSTS AND TRUSTEES; WILLS.	

**I. EXECUTORS GENERALLY.**

**1. Rights of Executors — Imperfect Gift of Personality—Intention to Give—Person Appointed an Executor—Validity of Gift—Bonds Payable to Bearer.**—The principle laid down in *Strong v. Bird* is not confined to a release of debt, but extends to a gift of personal property. Therefore, where a testator has expressed the intention of making a gift of personal property belonging to him to one who upon his death becomes his executor, the intention continuing unchanged, the gift becomes perfected at law, and the executor is entitled to hold the property for his own benefit; and it is immaterial whether the donee is sole executor or one of several executors.

*Strong v. Bird* ((1874), L. R. 18 Eq. 315; 43 L. J. Ch. 814; 30 L. T. 745; 22 W. R. 788—Jessel, M. R.) followed and applied.

IN RE STEWART, STEWART *v.* McLAUGHLIN, [[1908] 2 Ch. 251; 77 L. J. Ch. 525; 99 L. T. 106; 24 T. L. R. 679—Neville, J.]

**2. Rights of Executors — Residue Undisposed of—No Next of Kin—Legacies to All Executors—Rights of Executors to Residue.**—A testator by his will appointed three executors and gave them each a legacy of £1,000, and in addition he gave to one executor his foreign decorations and to another his diamond ring and his gold watch. The residuary personal estate was not disposed of by the will, and the testator died without leaving any next of kin.

HELD—that the three executors took the residue beneficially. In such a case the executors take beneficially unless the will shows a contrary intention, and, where there is any inequality in the gifts to two or more executors, no contrary intention is to be presumed, as it is when there is a gift of a pecuniary legacy to a sole executor or of equal gifts to all executors.

Decision of Eady, J. ([1907] 1 Ch. 171; 79 L. J. Ch. 82; 96 L. T. 225; 23 T. L. R. 212) reversed.

IN RE GLUKMAN, ATTORNEY-GENERAL *v.* JEFFREYS, [1908] 1 Ch. 552; 77 L. J. Ch. 326; 98 L. T. 486; 24 T. L. R. 340; 52 Sol. Jo. 279—C. A.

Affirmed, [1908] A. C. 411; 77 T. J. Ch. 685; 24 T. L. R. 793; 52 Sol. Jo. 660—H. L.

**II. GRANT OF LETTERS OF ADMINISTRATION.****(a) Administration Bonds.**

**3. Dispensing with Sureties.**—The Court in special circumstances dispensed with sureties and granted administration to the widow of the deceased on her own personal bond.

IN THE GOODS OF RUSHWORTH, 25 T. L. R. 128 [—Deane, J.]

**4. Sureties—Duration of Liability—Completion of Administration.**—In 1886 the eldest of three sisters took out letters of administration to the estate of their mother recently deceased; the defendants, a firm of solicitors, were her sureties.

In 1904 the other two sisters sued the defendants upon their bond, alleging misconduct by the administratrix and consequent loss of assets.

The defendants pleaded (1) a deed of indemnity signed by all three sisters; and (2) that the loss arose from no misconduct, but from the conduct of the three sisters after the estate had been fully administered.

HELD, on the evidence—(1) that there had been no misconduct by the administratrix or loss of assets in the course of administration; (2) that the sisters had fully understood the deed of indemnity, and that independent advice would not have helped them, and (3) that the loss arose from their own acts after all debts were paid and they had consented to enjoy the estate in undivided shares.

*Cooper v. Cooper* ((1874), L. R. 7 H. L. 53) followed.

BLAKE AND ANOTHER *v.* BAYNE AND ANOTHER, [[1908] A. C. 371; 77 L. J. P. C. 97; 99 L. T. 35—P. C.]

**Grant of Letters of Administration—Continued.**

5. *Sureties — Liability — Administration Obtained by Fraud.*—Letters of administration were obtained by fraud and subsequently cancelled on that ground. The sureties were not cognisant of the fraud.

HELD—that they were nevertheless liable for the acts and defaults of the fraudulent administrator committed by him while the letters were unrevoked.

DEBENDRA NATH DUTT *v.* ADMINISTRATOR  
[GENERAL OF BENGAL, 99 L. T. 68—P. C.]

6. *Sureties — Next of Kin Indemnifying — Validity.*—It is not contrary to public policy that sureties under an administration bond should be indemnified by the next of kin.

BLAKE *v.* BAYNE, [1908] A. C. 371; 77 L. J. P. C.  
[97; 99 L. T. 35—P. C.]

**(b) As on an Intestacy.**

[No paragraphs in this vol. of the Digest.]

**(c) Citation.**

[No paragraphs in this vol. of the Digest.]

**(d) Creditors.**

[No paragraphs in this vol. of the Digest.]

**(e) Crown's Rights.**

7. *Bastard — Bachelor — Intestate — Death Abroad.*—A soldier died in India, a bachelor, bastard, and intestate, leaving personal estate in this country.

HELD—that the Crown was entitled to the estate as *bona vacantia*, the right claimed not being in the nature of a succession.

IN RE BELL, 52 Sol. Jo. 600—Barnes, Pres.

**(f) Cum Testamento Annexo.**

[No paragraphs in this vol. of the Digest.]

**(g) De Bonis Non.**

[No paragraphs in this vol. of the Digest.]

**(h) Foreigners.**

8. *Limited Foreign Grant—Assets in England —Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.*—Upon the death intestate of a Frenchman, the French Court appointed an administrator for a period of six months only. The deceased had some personal property in England.

HELD—that a general grant should be made by the English Court to the foreign administrator.

IN THE ESTATE OF LEVY, [1908] P. 108; 77  
[L. J. P. 57; 52 Sol. Jo. 193—Deane, J.]

**(i) Limited Grants.**

[No paragraphs in this vol. of the Digest.]

**(k) Passing Over.**

[No paragraphs in this vol. of the Digest.]

**(l) Presumption of Death of Next of Kin.**

[No paragraphs in this vol. of the Digest.]

**(m) Renunciation by Next of Kin.**

[No paragraphs in this vol. of the Digest.]

**(n) Revocation of Grant.**

[No paragraphs in this vol. of the Digest.]

**III. PROBATE.****(a) Costs.**

8a. *Costs of Appeal—Charitable Institution Interested—Agreement that Costs shall come out of Estate.*—A charitable institution cannot consent that the costs of all parties on an appeal in a probate action shall come out of the estate without the consent of the Attorney-General.

An appeal is quite different from a case in a Court of first instance, where Judges commonly allow costs out of the estate.

KUTNER *v.* ADDENBROKE'S HOSPITAL, *Times*,  
[July 25th, 1908—C. A.]

**(b) Effect.**

[No paragraphs in this vol. of the Digest.]

**(c) Executor according to the Tenor.**

9. *Substituted Trustee—Executor According to the Tenor.*—W. by his will appointed his wife, his brother, and R. B. as executors. By a codicil he struck out R. B. from all participation in the will, and substituted his son for R. B. as trustee.

Probate was granted to the executors and to the son as executor according to the tenor.

IN RE WRIGHT, 25 T. L. R. 15—Deane, J.

**(d) Executor Misdescribed.**

[No paragraphs in this vol. of the Digest.]

**(e) Foreign Wills.**

10. *British Subject—Scotch Will—Wills Act, 1837 (1 Vict. c. 26)—Lord Kingsdown's Act, 1861 (24 & 25 Vict. c. 114).*—Where a domiciled Englishwoman, while temporarily residing in Scotland, executed a valid will in Scots form probate of it was granted in England.

RE BATHO, BATHO *v.* CROSS, 52 Sol. Jo. 318—  
[Barnes, Pres.]

**(f) Lost Will.**

11. *Destroyed Will—Error of Executrix — Admission of Draft — Practice.*—Where an executrix destroyed a will in a fit of temper, the Court refused on motion to admit a draft of the original will to probate. It must be propounded in an action.

IN RE CARTER, 52 Sol. Jo. 600—Barnes, Pres.

**(g) Practice.**

12. *Attesting Witness—Cross-examination.*—When a party is compelled to call the attesting witnesses to a will or codicil he may cross-examine them, as they are not the witnesses of either party, but of the Court.

JONES *v.* JONES, 24 T. L. R. 839; 52 Sol. Jo.  
[699—Barnes, Pres.]

**Probate—Continued.**

**13. Leave to Swear Death—Rights of Sequestrators.**—At the hearing of a motion for leave to swear death, neither sequestrators nor alleged creditors have any *locus standi* merely because the latter have obtained a writ of sequestration in consequence of the presumed deceased's wilful default in disobeying an order for account.

IN THE GOODS OF FOWLER, *Times*, April 7th, [1908—Bucknill, J.]

**14. Leave to Swear Death—Suicide of Husband and Wife—Survivorship.**—Where the bodies of a husband and wife were found in a river tied together in such circumstances that a verdict of suicide was returned at the coroner's inquest, the Court gave leave to swear that the death of the wife occurred on or since the day she was last seen, and that there was no reason to believe that her husband had survived her.

IN THE GOODS OF GOOD, 24 T. L. R. 493— [Bucknill, J.]

**15. Motion for the Appointment of Receiver and Administrator pendente lite—Citing Heir-at-Law.**—Application for the appointment of receiver and administrator of an estate *pendente lite* granted, although the heir-at-law had not yet been cited, the administration of the estate being urgent and the motion unopposed.

RE MESSITER-TERRY, 24 T. L. R. 465; 52 Sol. Jo. [379—Bucknill, J.]

**16. Retraction of Renunciation—Probate Rules—Practice.**—Where the chain of executorship has been broken, the Court may allow an executor who has renounced to take a grant in a different capacity.

RE RAYNER, 52 Sol. Jo. 226—Barnes, Pres.

**(h) Revocation of Probate.**

[No paragraphs in this vol. of the Digest.]

**IV. PAYMENT OF DEBTS AND DISTRIBUTION OF ASSETS.****(a) Conveyance of Real Estate.**

**17. Charge of Debts and Legacies—Implied Power to Sell or Mortgage—Beneficial Devise in Fee to One Executor—Mortgage by Him to Raise Legacies—Liability of Mortgagee to See to Application of Money.**—If land is devised in fee beneficially to one of several executors, subject to a general charge of debts and legacies, he can sell or mortgage it and give a good receipt for the purchase money.

He need not expressly purport to sell or mortgage in his capacity of executor; and even if the money is expressed to be required for payment of legacies, the purchaser or mortgagee is not bound to see to its application.

*In re Rebbeck*. ((1894), 42 W. R. 473) distinguished.

*Johnson v. Kennett* ((1835), 3 My. & K. 624, 630); *Forbes v. Peacock* ((1846), 1 Ph. 717, 721); *Stroughill v. Anstey* ((1852), 1 D. M. & G. 635); *Corser v. Cartwright* ((1875), L. R. 7 H. L.

731, 736); and *In re Venn and Furze's Contract* ([1894] 2 Ch. 101; 63 L. J. Ch. 303; 70 L. T. 312; 42 W. R. 440—Stirling, J.) applied.

IN RE HENSON, CHESTER v. HENSON, [1908] 2 [Ch. 356; 77 L. J. Ch. 598; 99 L. T. 336—Eady, J.]

**18. Mortgage by Executor being also Residuary Legatee—Charge on Property for Legacy to Another—Rights of Legatee.**—A testator, who died in 1885, by his will left all his property to his four sons by his first wife, subject to a charge for a legacy in favour of his four sons by his second wife. The legacy remained unpaid. The four elder sons in 1890 deposited the title deeds of part of the property with a bank as a security for advance, and, in 1889, they executed a form of mortgage of the property to the bank. The bank, if they had made an investigation of title, would have obtained cognisance of the will which created the charge. The mortgagors practised no concealment.

HELD—that as the four younger sons were legatees and not merely creditors and as the bank had constructive notice of the charge, the claim of the four younger sons must prevail over the mortgage of the bank.

*Graham v. Drummond* ([1896] 1 Ch. 968; 65 L. J. Ch. 472; 74 L. T. 417; 44 W. R. 596; 12 T. L. R. 319—Romer, J.) distinguished.

THE BANK OF BOMBAY AND ANOTHER v. [SULEMAN SOMJI AND OTHERS, 99 L. T. 532; 24 T. L. R. 840; 52 Sol. Jo. 727—P. C.]

**(b) Insolvent Estate.**

**19. Set-off—Mutual Dealings—Death of Testator Insolvent—Person Taking Transfers of Mortgages and Unsecured Debts—Sale of Mortgaged Property—Surplus—Administration Action—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 38.**—In 1907 judgment was given for the administration of the real and personal estate of G., who had died insolvent in 1890. His widow, the sole legatee, devisee and executrix, had never proved his will. Between 1890 and 1907 H. bought and had assigned to him unsecured debts owing by G. at the date of his death, and he also bought and took transfers of some mortgages on G.'s real estate. He sold the mortgaged property, after retaining the principal and interest due to him under the mortgages had a balance in hand.

HELD—that in the administration he could not set-off such balance against the assigned debts due to him, for the purchases of the debts and transfers of the mortgages after G.'s death did not amount to "mutual dealings."

IN RE GEDNEY, SMITH v. GRUMMIT, [1908] 1 Ch. [804; 77 L. J. Ch. 428; 98 L. T. 797; 15, Manson, 97—Warrington, J.]

**(c) Payment of Debts.**

**20. Affiliation Order—Death of Putative Father—Arrears of Maintenance Unpaid—Claim for Arrears against Putative Father's Estate—Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65), s. 4.**—Where an affiliation



### Payment of Debts and Distribution of Assets— *Continued.*

order has been made directing the putative father of an illegitimate child to pay a weekly sum to the mother for the maintenance of such child, and the father dies leaving arrears of the sum unpaid, the mother cannot recover such arrears, or any accruing payments from the father's estate.

IN RE HARRINGTON, WILDER *v.* TURNER,  
[[1908] 2 Ch. 687; 72 J. P. 501; 25 T. L. R.  
3; 52 Sol. Jo. 855—Warrington, J.]

**21. Retaining Legacy to Meet Debt—Immediate Gift of Share of Residue—Beneficiary Owing to Testator—Debt Payable by Instalments.**—X. owed to A. a debt payable by instalments. A. died, and by his will a share of his residuary estate was given immediately to X.

HELD—that A.'s executors could not retain such share as against future instalments of the debt.

IN RE REES (1889) 60 L. T. 260—Kekewich, J.) followed.

IN RE ACKERMAN (1891) 3 Ch. 212; 61 L. J. Ch. 34; 65 L. T. 194; 40 W. R. 12—Kekewich, J.) distinguished.

IN RE ABRAHAM, ABRAHAM *v.* ABRAHAM  
[[1908] 2 Ch. 69; 77 L. J. Ch. 578; 99 L. T.  
240—Warrington, J.]

**22. Statute-barred Debt Due to Estate—Same Person Residuary Legatee of Debtor and Entitled to Share in Residuary Estate of Creditor—Bringing Debt into Account.**—A. was sole residuary legatee of a man who owned a statute-barred debt to B. A. was also entitled to a share in B.'s residuary estate.

Neville, J. having held that, before sharing in B.'s estate, he must bring into account the debt and interest thereon:

HELD, on appeal—that A. was in no sense a debtor to B.'s estate, and need not bring the debt into account.

Decision of Neville, J. ([1908] 8 Ch. 50; 77 L. J. Ch. 434; 98 L. T. 834) reversed.

IN RE BRUCE, LAWFOORD *v.* BRUCE, [1908] 2 Ch. 682—C. A.

### (d) Payment of Legacies.

**23. Inquiry to Ascertain Legatee—Discharge for Legacy—Costs—R. S. C., Ord. 65, r. 14 B.]**—The costs of an inquiry as to the identity of a legatee are properly costs payable out of the residuary estate; and although the costs of an inquiry as to the proper officer to give a discharge are in ordinary cases borne by the legatee, yet where the struggle has been as to whether the legacy is payable at all, the costs must be borne by the residuary estate.

RE LACY, DYSON *v.* SPEIGHT, 124 L. T. Jo. [293—Eve, J.]

### (e) Possible Future Liabilities.

[No paragraphs in this vol. of the Digest.]

### (f) Right of Retainer.

[No paragraphs in this vol. of the Digest.]

### (g) Testamentary Expenses.

[No paragraphs in this vol. of the Digest.]

## V. POWERS AND LIABILITIES.

### (a) Carrying on Business.

[No paragraphs in this vol. of the Digest.]

### (b) Liabilities.

**24. Leaseholds—Administrator ad colligenda bona—Liability for Rent of Premises—Personal Liability.**—A person who died intestate held a lease of certain premises at a rent. The defendant was appointed administrator *ad colligenda bona* on June 7th with power to sell the lease. The defendant entered upon the premises the same day and endeavoured unsuccessfully to sell the lease. A quarter's rent became due after the death of the tenant, and, the amount being unpaid, the lessor brought an action against the defendant to recover possession of the premises under a forfeiture clause in the lease, together with the quarter's rent in arrear and mesne profits. The defendant did not give up possession until after judgment for possession was pronounced.

HELD—that the defendant, having entered, was personally liable to pay rent and mesne profits from June 7th, the amount thereof being calculated on the annual value of the premises.

WHITEHEAD *v.* PALMER ([1908] 1 K. B. 151; [77 L. J. K. B. 60; 97 L. T. 909; 24 T. L. R. 41—Channell, J.]

**25. Liability of Executors—Delay in Proving Will—Increased Duty—Executor de son tort.**—A testator appointed executors and trustees of his will and gave them power to leave all his residuary property in the business which he was carrying on. Fifteen years after his death the defendants, his surviving executors, proved his will. In the meanwhile the executors had intermeddled in various ways. The capital had been left in the business and out of profits had been largely increased. On proving the will the executors paid out of the assets of the estate nearly £1,000 as duty on this accretion of capital. The plaintiffs as entitled in remainder claimed to recover this sum on the ground that this loss to the estate had been caused by negligence and to have an account on the footing of wilful default.

HELD—that no liability attached to the executors for delay in proving the will, that by intermeddling they had originally constituted themselves executors *de son tort*, but that this claim was not one which could be enforced against executors *de son tort*, and that the defendants did not render themselves liable by subsequently legalising their previous actions.

IN RE MORRIS, MORRIS *v.* MORRIS, 43 L. J. [N. C. 58; 124 L. T. Jo. 315—Neville, J.]

### (c) Powers.

[No paragraphs in this vol. of the Digest.]

## VI. ACTION FOR ADMINISTRATION.

**26. Devise of Mortgaged Estate—Partition Action—Fund in Court Representing Rents and Profits—Administration Action—Right of Creditors to Attach Fund Before Judgment—Administration of Estates Act, 1833 (3 & 4 Will. 4, c. 104).—**The Administration of Estates Act, 1833, in making the real estate of a deceased person assets for the payment of his debts, whether due on simple contract or on specialty, gives no lien or charge on such real estate until a judgment has been obtained.

M., who died in 1876, left his residuary estate to three persons in equal shares. At the time of his death he was entitled to certain real estate which he had mortgaged in 1839. In 1902 the devisees commenced an action for sale in lieu of partition, and in that action certain sums, representing the rents and profits of the mortgaged property, had been paid into Court. In 1903 judgment in the action was given directing the usual accounts and inquiries, and ordering the property to be sold, which had not, however, yet been done. In 1907 the plaintiffs, in whom the benefit of the mortgage of 1839 was now vested, issued a writ on behalf of themselves and all other creditors of M. against the devisees, claiming (1) administration, and (2) that the devisees might be restrained from applying for the transfer and payment to them of the fund in Court to the credit of the partition action, and that such fund might be ordered to be transferred to the credit of the present action. No judgment had as yet been obtained in this action.

HELD—that under the Act of 1833 neither the corpus nor the rents and profits of the real estate became liable to creditors until a judgment had been obtained, and that, as no judgment had been obtained in the present case, the application must be refused.

IN RE MOON, HOLMES v. HOLMES, [1907] 2 [Ch. 304; 76 L. J. Ch. 535; 97 L. T. 748—Warrington, J.

## EXECUTORY DEVISE.

See TRUSTS; WILLS.

## EXHUMATION OF HUMAN REMAINS.

See BURIAL AND CREMATION.

## EXPLOSIVES.

[No paragraphs in this vol. of the Digest.]

## EXPULSION ORDER.

See ALIENS,  
Y.D.

## EXTORTION.

See CRIMINAL LAW.

## EXTRADITION AND FUGITIVE OFFENDERS.

See also CRIMINAL LAW AND PROCEDURE.

**1. Extradition—Conviction Abroad—Temporary Discharge on Ground of Ill-health—Sentence to be Completed on Recovery—Escape to England—Expiration of Original Sentence—Exemption from Punishment.]—**An applicant for a writ of *habeas corpus* who was detained in custody under an extradition order in respect of a conviction in Germany had been temporarily discharged from prison in that country owing to ill-health, but on his recovery a competent German Court had ordered his re-arrest in order that he might serve the remainder of his sentence. Meantime the applicant had removed to England, and his extradition was applied for by the German Government at a date subsequent to the time when his period of imprisonment, if it had been continuous, would have expired through lapse of time.

HELD—that no exemption from punishment had been acquired by lapse of time according to English law within the meaning of article 5 of the Treaty of 1872 between England and Germany and that the *habeas corpus* must therefore be refused.

R. v. BRIXTON PRISON GOVERNOR, EX PARTE [CALBERLA, [1907] 2 K. B. 861; 76 L. J. K. B. 1117; 71 J. P. 509; 98 L. T. 100; 23 T. L. R. 737; 21 Cox, C. C. 544—Div. Ct.

**2. Extradition—Conviction Abroad en contumace—Belgian Law—Prescription—Surrender after Expiry of Prescriptive Period—Extradition Act, 1870 (33 & 34 Vict. c. 52), ss. 3 (3), 10, 11.]—**The prisoner was convicted in Belgium, in his absence *en contumace*, in June, 1901, of the crime of larceny. In August, 1903, a warrant for his arrest was issued in England at the request of the Belgian Government, and in February, 1906, he was arrested, and was further charged with obtaining money by false pretences in England. In March, 1906, an order of committal for extradition was made, but was not put in force till February, 1907, on the expiry of his sentence for obtaining money by false pretences in this country, when, immediately after his release, he was re-arrested and detained for extradition.

HELD—that, assuming that the prescriptive period of five years fixed by the law of Belgium expired in July, 1906, so as to make the offence no longer punishable there, the Court would not by means of a writ of *habeas corpus* interfere with the surrender of the prisoner to the Belgian authorities by a Secretary of State under the extradition proceedings, as they were effectively

**Extradition and Fugitive Offenders—Continued.**  
commenced before the expiry of the period of prescription.

R. v. GOVERNOR OF BRIXTON PRISON, EX PARTE AUWERA, [1907] 2 K. B. 157; 76 L. J. K. B. 661; 71 J. P. 226; 96 L. T. 821; 23 T. L. R. 415; 21 Cox, C. C. 446—Div. Ct.

3. *Fugitive Offender—Colonial Statute—Later Amending Statute—Proof of Colonial Law—Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69), ss. 5, 9, 10.*—The applicant was arrested in England as a fugitive offender from the British colony of Victoria on a warrant charging him with larceny in that State. Three warrants for larceny had been previously issued against him in Victoria, and were put in evidence before the magistrate, together with the depositions taken there, which included evidence by a senior constable of police that by the Crimes Act, 1890, an Act then in force in the colony of Victoria, the crime of larceny was punishable by imprisonment with hard labour for any term not exceeding five years, but no further evidence of the law of Victoria was given. The magistrate committed the applicant for return to the colony. On the argument of a rule *nisi* for a writ of *habeas corpus*, it was admitted that the facts did not amount to an offence within the Crimes Act, 1890 (Victorian statute), but it was contended that they were made an offence by the Crimes Act, 1890, Amendment Act, 1896 (Victorian statute), and that evidence of the principal Act having been given the Court was bound to take judicial notice of the amending Act.

HELD—that colonial law, like foreign law, must be proved by evidence, and in the circumstances of the case the Court declined either to send the case back to the magistrate so that the prosecution might give further evidence, or to adjourn the case for the ascertainment of the law of Victoria under the British Law Ascertainment Act, 1859, and the rule was accordingly made absolute, and the order of the magistrate discharged.

[But see now the "Evidence (Colonial Statutes) Act, 1907."—Ed.]

R. v. BRIXTON PRISON GOVERNOR, EX PARTE PERCIVAL, [1907] 1 K. B. 696; 76 L. J. K. B. 619; 71 J. P. 148; 96 L. T. 545; 23 T. L. R. 238; 21 Cox, C. C. 387—Div. Ct.

## EXTRAORDINARY TRAFFIC.

See HIGHWAYS.

## FACTORS.

See AGENCY; BAILMENTS.

## FACTORIES AND WORKSHOPS.

	COL.
I. DEFINITIONS . . . . .	228
[No paragraphs in this vol. of the Digest.]	
II. EMPLOYMENT . . . . .	228
[No paragraphs in this vol. of the Digest.]	
III. MACHINERY . . . . .	228
IV. MEANS OF ESCAPE FROM FIRE . . . . .	228
[No paragraphs in this vol. of the Digest.]	
V. SANITATION AND VENTILATION . . . . .	228
[No paragraphs in this vol. of the Digest.]	
VI. UNDERGROUND BAKEHOUSES . . . . .	228
[No paragraphs in this vol. of the Digest.]	
And see LANDLORD AND TENANT; MASTER AND SERVANT; NEGLIGENCE.	

### I. DEFINITIONS.

[No paragraphs in this vol. of the Digest.]

### II. EMPLOYMENT.

[No paragraphs in this vol. of the Digest.]

### III. MACHINERY.

1. *Dangerous Machinery—Absence of Fencing—Bodily Injury—Limit of Time for Taking Proceedings—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), ss. 135 (1), 136, 146 (1).*—Sect. 135 of the Factory and Workshop Act, 1901, provides that if a factory is not kept in conformity with the Act the occupier shall be guilty of an offence. Sect. 136 provides that if any person suffers bodily injury in consequence of the occupier neglecting to observe any provision of the Act the occupier shall be guilty of an offence.

An information was laid on October 24th, 1907, by a factory inspector against the occupiers of a factory for not having a dangerous machine securely fenced, whereby a person suffered bodily injury on July 31st, 1907. The inspector had on January 21st, 1907, visited the factory and found the machine unfenced and cautioned the manager. The occupiers neglected to fence the machine, and it was still unfenced on July 31st, 1907, and in consequence the person in question suffered bodily injury.

HELD—that the offence created by sect. 136 of the Act was an entirely separate offence from that created by sect. 135, and that, therefore, the proceedings were not out of time under sect. 146 (1), as the information had been laid within three months after the date at which the offence charged came to the knowledge of the inspector.

R. v. TAYLOR, [1908] 2 K. B. 237; 77 L. J. K. B. 531; 72 J. P. 238; 98 L. T. 754—Div. Ct.

### IV. MEANS OF ESCAPE FROM FIRE.

[No paragraphs in this vol. of the Digest.]

### V. SANITATION AND VENTILATION.

[No paragraphs in this vol. of the Digest.]

### VI. UNDERGROUND BAKEHOUSES.

[No paragraphs in this vol. of the Digest.]



**FAIRS.**

*See* MARKETS AND FAIRS.

---

**FALSE IMPRISONMENT.**

*See* TRESPASS.

---

**FALSE PERSONATION.**

*See* CRIMINAL LAW AND PROCEDURE.

---

**FALSE PRETENCES.**

*See* CRIMINAL LAW AND PROCEDURE  
(Larceny).

---

**FALSE STATEMENT.**

*See* ELECTIONS; MISREPRESENTATION;  
MISTAKE.

---

**FALSE WARRANTY.**

*See* FOOD AND DRUGS.

---

**FALSIFICATION OF ACCOUNTS.**

*See* CRIMINAL LAW AND PROCEDURE.

---

**FAMILY ARRANGEMENT.**

[No paragraphs in this vol. of the Digest.]

---

**FENCES.**

*See* BOUNDARIES AND FENCES.

---

**FERÆ NATURÆ.**

*See* ANIMALS.

---

**FEROCIOUS ANIMAL.**

*See* ANIMALS; NEGLIGENCE.

**FERRIES.**

1. *Disturbance—Bridge built near Ferry without Parliamentary Powers—Loss of Ferry Traffic—Action by Owner of Franchise.*—The exclusive right of the owner of a franchise of a ferry only extends to carriage by boat. Therefore he cannot maintain an action for loss of traffic caused by the erection and user of a bridge close to his line of ferry.

Dictum of Mellish, L. J., in *Hopkins v. G. N. Ry. Co.* ((1877), 2 Q. B. D. 224; 46 L. J. Q. B. 265; 36 L. T. 898—C. A.) followed.

Decision of Neville, J. ([1907] 1 Ch. 437; 76 L. J. Ch. 268; 71 J. P. 145; 96 L. T. 257; 23 T. L. R. 269; 5 L. G. R. 286) affirmed.

*DIBDEN v. SKIRROW*, [1908] 1 Ch. 41; 77 L. J. [Ch. 107; 71 J. P. 555; 97 L. T. 658; 24 T. L. R. 70; 6 L. G. R. 108—C. A.]

---

**FERTILISERS AND FEEDING STUFFS.**

*See* AGRICULTURE.

---

**FIERI FACIAS.**

*See* PRACTICE AND PROCEDURE.

---

**FINES.**

*See* COPYHOLDS; REAL PROPERTY.

---

**FIRE, ESCAPE FROM.**

*See* FACTORIES AND WORKSHOPS.

---

**FIRE, LIABILITY FOR.**

*See* NEGLIGENCE; RAILWAYS.

---

**FIREARMS.**

*See* CRIMINAL LAW.

---

**FIRE BRIGADE.**

*See* PUBLIC HEALTH.

---

**FIRE INSURANCE.**

*See* INSURANCE.

**FIRST FRUITS.**

See ECCLESIASTICAL LAW.

**FISHERIES.**

	COL.
I. UNLAWFUL ANGLING . . . . .	231
II. FISHING RIGHTS . . . . .	231
III. SALMON FISHERY ACTS. . . . .	232
(a) Fishery Districts . . . . .	232
[No paragraphs in this vol. of the Digest.]	
(b) Illegal Instruments . . . . .	232
[No paragraphs in this vol. of the Digest.]	
(c) Offences Generally . . . . .	232
[No paragraphs in this vol. of the Digest.]	
IV. OYSTER BEDS . . . . .	232
[No paragraphs in this vol. of the Digest.]	
V. SEA FISHERIES . . . . .	232
[No paragraphs in this vol. of the Digest.]	

See also NUISANCES.

**I. UNLAWFUL ANGLING.**

1. *Seizure of Tackle—Exemption from Further Penalty—Meaning of Word “Angling”*—*Larceny Act, 1861* (24 & 25 Vict. c. 96), s. 25.—Fishing by means of net-lines, consisting of two pegs driven into the ground with lines and hooks and a stone weight attached, does not constitute “angling” within the meaning of the proviso in sect. 25 of the *Larceny Act, 1861*, so as to exempt the person unlawfully fishing with the same from any penalty other than their seizure.

BARNARD v. ROBERTS, 71 J. P. 277; 96 L. T. [648; 23 T. L. R. 439; 21 Cox, C. C. 425—Div. Ct.]

**II. FISHING RIGHTS.**

2. *Lake—Inland Lake—No Public Right to Fish.*—There is no public right of fishing in an inland non-tidal lake.

O'NEILL v. JOHNSON, [1908] 1 I. R. 358—Ross, J.

3. *Prescription—Alleged Prescriptive Right of Freeholders of Manor—No Stint—Commercial Purposes.*—Riparian owners claiming title to a river bed brought an action of trespass against persons fishing in their non-tidal river. The defendants alleged a prescriptive right of free fishery or common of fishery vested in the freeholders of certain manors in respect of their freeholds adjoining the river. They proved that for many years such freeholders had exercised such alleged right for commercial purposes.

HELD—that the defence failed, since a prescription in a *que* estate for a profit *à prendre* in *alieno solo* without stint and for commercial purposes is unknown to the law.

Decision of Neville, J. ([1908] 1 Ch. 230; 77 L. J. Ch. 111; 98 L. T. 236; 24 T. L. R. 105) reversed.

LORD CHESTERFIELD v. HARRIS, [1908] 2 Ch. [397; 77 L. J. Ch. 688; 99 L. T. 558; 24 T. L. R. 763; 52 Sol. Jo. 639—C. A.]

**III. SALMON FISHERY ACTS.**

[No paragraphs in this vol. of the Digest.]

**(a) Fishery Districts.**

[No paragraphs in this vol. of the Digest.]

**(b) Illegal Instruments.**

[No paragraphs in this vol. of the Digest.]

**(c) Offences Generally.**

[No paragraphs in this vol. of the Digest.]

**IV. OYSTER BEDS.**

[No paragraphs in this vol. of the Digest.]

**V. SEA FISHERIES.**

[No paragraphs in this vol. of the Digest.]

**FIXTURES.**

See AGRICULTURE; BILLS OF SALE DISTRESS; LANDLORD AND TENANT, No. 4; MORTGAGES, Nos. 1, 2; REAL PROPERTY AND CHATTELS REAL, No. 1.

**FLOTSAM AND JETSAM.**

See SHIPPING AND NAVIGATION.

**FOOD AND DRUGS.**

	COL.
I. SALE OF FOOD AND DRUGS ACTS.	
(a) Administration and Procedure . . . . .	232
(b) Analysis . . . . .	233
[No paragraphs in this vol. of the Digest.]	
(c) Offences . . . . .	233
(d) Taking Samples . . . . .	234
(e) Warranties . . . . .	235
II. SALE OF UNSOUND MEAT	
(a) Generally . . . . .	237
(b) In London . . . . .	238
[No paragraphs in this vol. of the Digest.]	
III. SALE OF BREAD . . . . .	238
IV. MARGARINE . . . . .	239

**I. SALE OF FOOD AND DRUGS ACTS.****(a) Administration and Procedure.**

1. *Prosecutions by Officers of Local Government Board and Board of Agriculture as Private Purchasers—Sale of Food and Drugs Act, 1899* (62 & 63 Vict. c. 51), s. 2 (1).—The Sale of Food and Drugs Act, 1899, confers on the Local Government Board and the Board of Agriculture, and the corresponding Boards of Scotland and Ireland, powers, in default of action by the local authority, to institute proceedings at the instance of their officers against persons infringing the provisions of the Sale of Food and Drugs Acts,

**Sale of Food and Drugs Act—Continued.**

and prescribes the procedure to be followed in such prosecutions.

**HELD**—that the officers of these Boards are also entitled to institute proceedings as private individuals in the method prescribed by the Sale of Food and Drugs Act, 1875, and that they are not limited in prosecutions at their instance to cases contemplated by the Act of 1899.

**FALCONER v. WHYTE**, [1908] S. C. (J.) 40; 45 [Sc. L. R. 610—Ct. of Justy.

**(b) Analysis.**

[No paragraphs in this vol. of the Digest.]

**(c) Offences.**

**2. Cream—Use of Preservatives—Injurious to Children and Invalids—Uninjurious to Adults—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 3.**—The appellant was convicted for selling, contrary to sect. 3 of the Sale of Food and Drugs Act, 1875, a pot of cream mixed with boracic acid so as to render the article injurious to health. The cream was sold as cream, and there was a statement on the label that the cream contained a small quantity of preservatives to retard sourness. No indication beyond the label was given to the purchaser as to the composition of the cream. It was proved that preserved cream was harmless to a normal adult in ordinary quantities when containing only a proportion of boracic acid to the extent contained in the sample of which complaint was made, namely, 0·313 per cent., but that it was injurious to the health of children and invalids.

**HELD**—that the justices having found as a fact that the cream was injurious to a substantial portion of the community, and no notice beyond that above indicated having been given to the purchaser as to the composition of the cream, the conviction must be affirmed.

**CULLEN v. MCNAIR**, 72 J. P. 376; 99 L. T. [358; 24 T. L. R. 692; 6 L. G. R. 753—Div. Ct.

**3. Milk—Deficiency of Non-fatty Solids—Analyst's Certificate—Evidence—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 21—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 4 (1).**—The respondent was summoned under sect. 6 of the Sale of Food and Drugs Act, 1875, for selling to the prejudice of the purchaser milk which was adulterated with 14·4 per cent. of water and was not of the nature, substance, and quality demanded. The analyst's certificate was put in as evidence by the appellant, and it stated that the milk contained 7·28 per cent. of non-fatty solids and 2·50 per cent. of fat, and that when judged by the Sale of Milk Regulations, 1901, the sample showed a deficiency of non-fatty solids corresponding to an addition of 14·4 per cent. of water. The respondent did not require the analyst to be called, and did not call any evidence of his own. The justices found as a fact that the adulteration of the milk by the addition

of 14·4 per cent. of water had not been established, and they dismissed the summons.

**HELD**—that upon this evidence the respondent ought to have been convicted.

**ELDER v. DRYDEN**, 72 J. P. 355; 99 L. T. 20; [6 L. G. R. 786—Div. Ct.

**4. Sale to Prejudice of Purchaser—Paregoric Asked For—Substitute Supplied—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 8.**—The servant of the respondent, who was a chemist, on being asked by the appellant for paregoric, sold to him a substance containing only half the amount of alcohol which should be present in a genuine sample of paregoric, and containing no tincture of opium, which is an essential constituent according to the formula given in the British Pharmacopœia. The bottle was labelled "Paregoric—Poison," but the word "poison" had been struck out in pencil and the word "substitute" added in pencil. On the hearing of an information against the respondent under sect. 6 of the Sale of Food and Drugs Act, 1875, for selling paregoric not of the nature, substance, and quality demanded, it was proved that paregoric was not sold because the respondent's servant, being an unqualified assistant, could not sell poison without committing an offence against the Pharmacy Acts.

**HELD**, on the special facts—that there was no sale to the prejudice of the purchaser, and that therefore the respondent had not committed the offence charged.

**BUNDY v. LEWIS**, 72 J. P. 489—Div. Ct.

**5. Spirits—Rum—Notice that Strength not Guaranteed—Sufficiency of—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6—Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30), s. 6.**—The appellant, a publican, hung up in his public-house the following notice: "Notice—All spirits sold in this establishment are of the same quality and strength as heretofore, but, in order to comply with the Food and Drugs Act, will not be of any guaranteed strength." The respondent purchased at the appellant's public-house a quartern of rum, which on analysis was found to consist of 96·3 parts of rum (25 degrees under proof) and 3·7 parts of added water.

**HELD** (Darling, J., dissenting)—that the above notice was not sufficient to protect the appellant from conviction for selling to the prejudice of the purchaser an article not of the nature, substance, and quality demanded, as the notice did not bring home to the mind of the purchaser that the rum had been reduced below the limit of 25 degrees under proof fixed by sect. 6 of the Sale of Food and Drugs Act Amendment Act, 1879.

**DAWES v. WILKINSON**, [1907] 1 K. B. 278; 76 [L. J. K. B. 182; 71 J. P. 23; 96 L. T. 26; 23 T. L. R. 34; 5 L. G. R. 1; 21 Cox, C. C.; 340—Div. Ct.

**(d) Taking Samples.**

**6. Procurement of Sample by Assistant Inspector—Proceedings by Inspector—Milk—**



**Sale of Food and Drugs Act—Continued.**

*Sale of Food and Drugs Act Amendment Act, 1879* (42 & 43 Vict. c. 30), s. 3.]—An assistant inspector of weights and measures having by direction of the appellant taken a sample of milk in the course of its delivery by the respondents to the purchasers, the sample was submitted to the public analyst by the appellant, who was an inspector under the Sale of Food and Drugs Acts, and was found to be deficient in milk fat to the extent of about 9 per cent. An information was then laid against the respondents for selling the milk without disclosure of the alteration, the proceedings being instituted and carried on by and in the name of the appellant.

**HELD**—that as the appellant had procured the sample through the agency of the assistant inspector, the proceedings were rightly instituted and carried on by and in the name of the appellant.

**TYLER v. DAIRY SUPPLY CO., LD.**, 72 J. P. [132; 98 L. T. 867; 6 L. G. R. 422—Div. Ct.]

**(e) Warranties.**

**7. Evidence in Writing to Connect Particular Consignment with Warranty—Sale of Food and Drugs Act, 1875** (38 & 39 Vict. c. 63), ss. 9, 25.]—In October, 1905, the appellant, a dairyman, contracted with a dairy company to purchase from them the whole of the milk required for his dairy for twelve months, all the milk being warranted pure with all its cream as received from the cow. In June, 1906, a consignment of milk was delivered to the appellant by the dairy company under the contract with a delivery note giving the date and the name of the dairy company as consignors. A portion of the consignment was sold to the respondent, and on analysis was found to be deficient in milk fat to the extent of 28 per cent. On a prosecution of the appellant under sect. 9 of the Sale of Food and Drugs Act, 1875, for selling the milk in its altered state, the appellant relied on the contract of October, 1905, as a warranty within sect. 25.

**HELD**—that as by the terms of the contract the appellant was to take all his milk from the dairy company in question, there was a sufficient connection in writing between the particular consignment and the warranty to constitute the warranty a defence.

**Watts v. Stevens** ([1906] 2 K. B. 323; 75 L. J. K. B. 828; 70 J. P. 418; 95 L. T. 200; 22 T. L. R. 622; 4 L. G. R. 821—Div. Ct.) discussed.

**EVANS v. WEATHERITT**, [1907] 2 K. B. 80; 76 L. J. K. B. 628; 71 J. P. 228; 96 L. T. 641; 23 T. L. R. 424; 5 L. G. R. 608; 21 Cox, C. C. 415—Div. Ct.]

**8. Importation of Adulterated Butter not so Marked—Defence of Warranty—Sale of Food and Drugs Act, 1899** (62 & 63 Vict. c. 51), ss. 1, 20 (3) 25, 28.]—Where a defendant is charged under sect. 1 (1) of the Sale of Food and Drugs Act, 1899, with importing adulterated butter in packages not conspicuously marked with a name or description indicating that the butter has

been so treated, he cannot rely upon a warranty of purity received by him from the foreign vendor.

The defence of warranty is only open to a person charged with selling adulterated goods in the United Kingdom.

**KELLY v. LONSDALE**, [1906] 2 K. B. 486; 75 L. J. K. B. 822; 70 J. P. 441; 95 L. T. 427; 22 T. L. R. 685; 4 L. G. R. 949; 21 Cox, C. C. 281—Div. Ct.]

**9. Milk in Course of Transit—Place of Delivery—Sale of Food and Drugs Act, 1875** (38 & 39 Vict. c. 63), ss. 6, 25.]—The respondent, a milk salesman at West Ham, agreed to buy from a country dairyman "about 16 gallons of pure new milk with all its cream, delivery daily carriage paid to Wanstead Park Station, properly cooled and in good condition."

On a certain date covered by the contract, four churns of milk arrived at Wanstead Park Station, consigned to the respondent from a station in Derbyshire, the churns having a label attached stating that the milk was warranted pure new milk with all its cream, pursuant to the contract. The churns remained on the platform for about forty-five minutes before they were handed to the respondent's man by the railway company's servant, the latter not having tampered with them in any way. The respondent subsequently sold some of the milk, which upon analysis was found to be deficient in fat. Upon an information charging the respondent with an offence under sect. 6 of the Sale of Foods and Drugs Act, 1875, the justices dismissed the summons.

**HELD**—that the place of delivery was Wanstead Park Station, that there was sufficient evidence that the milk was not tampered with after its arrival at the station, and that the respondent was protected by the warranty.

**SANDERS v. SADLER**, 71 J. P. 3; 95 L. T. 872; 23 [T. L. R. 11; 5 L. G. R. 240; 21 Cox, C. C. 316—Div. Ct.]

**10. Sub-sale—Warranty by Original Vendor—Necessity of Written Warranty from Sub-vendor—Sale of Food and Drugs Act, 1875** (38 & 39 Vict. c. 63), ss. 9, 25.]—To succeed on a defence of written warranty under sect. 25 of the Sale of Foods and Drugs Act, 1875, a retailer must get a warranty from his immediate vendor; and cannot rely upon a warranty given to his vendor by the real producer, at any rate unless his vendor agrees in writing to give him the benefit thereof.

By a written agreement A. agreed to supply B. for a year with eight to ten barn gallons per day of genuine milk as in fact received from farmers. It was stated at the end of the agreement "that no warranty is hereby implied and that the buyer (B.) must satisfy himself of its quality before it is accepted by him." A. and B. verbally agreed that this milk should be supplied by a certain farmer by consignment under warranty directly to a railway station where it would be received by B. A churn of this milk was accordingly so despatched by the farmer with a label addressed to A. with the words

**Sale of Food and Drugs Act—Continued.**

"Warranted pure new milk with all its cream and free from preservative." B. was summoned under sect. 9 of the Sale of Food and Drugs Act, 1875, and raised the defence of "written warranty" under sect. 25 of that Act.

**HELD**—that there was no written warranty within the meaning of the section, as there was no written warranty from A. to B.

**HARGREAVES v. SPACKMAN**, 72 J. P. 52; 98 [L. T. 41; 24 T. L. R. 173; 6 L. G. R. 145; 21 Cox, C. C. 541—Div. Ct.

11. *Sub-sale—Warranty of Original Vendor—Passed on to Sub-Vendor—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 25.*—The appellant was summoned under sect. 6 of the Sale of Food and Drugs Act, 1875, for selling to the prejudice of the purchaser milk not of the nature, substance and quality demanded. He set up a warranty contained in a contract by which his vendor, E., agreed to supply to the appellant the milk supplied to himself (E.) by one B. in the same condition as received and as warranted by B., viz., pure new unskimmed milk. A label which was attached to the particular churn of milk in question and was addressed to E. had on it the words "Warranted pure new and unskimmed milk," and was signed by B. The appellant, as agent for E., received at the railway station the particular milk in question, which had been consigned from B. to E.

**HELD**—that whether the label was or was not a sufficient warranty within sect. 25 of the Sale of Food and Drugs Act, 1875, such a warranty was contained in the contract between E. and the appellant, and the label constituted a sufficient connection between the particular consignment and the warranty, and therefore the appellant could not be convicted.

**REES v. DAVIES**, 72 J. P. 375; 24 T. L. R. 735; [6 L. G. R. 1038—Div. Ct.

**II. SALE OF UNSOUND MEAT.****(a) Generally.**

12. *Possession of Unsound Meat in Slaughterhouse—Preparation of Carcass for Human Food—Exposure or Conveyance for Sale.*—If meat, unfit for human food, is found in the slaughterhouse of a butcher, being dressed and prepared for sale as human food, and is seized by the officer of the local sanitary authority, condemned by a magistrate and ordered to be destroyed, and is destroyed accordingly, the butcher is liable to a penalty under the Public Health Act on the complaint of the sanitary authority, although it is neither alleged in the summons nor proved that such meat was being exposed or conveyed for sale.

**Mallison v. Carr** ([1891] 1 Q. B. 48; 60 L. J. M. C. 34; 55 J. P. 102; 63 L. T. 459; 39 W. R. 270; 17 Cox, C. C. 220—Div. Ct.) followed.

**Firth v. M'Phail** ([1905] 2 K. B. 300; 74 L. J. K. B. 458; 69 J. P. 203; 92 L. T. 567; 21 T. L. R. 403; 3 L. G. R. 478—Div. Ct.) distinguished.

It is immaterial that the disease could only be detected on killing the animal, and that the carcass was seized immediately upon slaughter.

**CORK RURAL COUNCIL v. WALSH**, [1908] 2 I. R. [234—K. B. D.

**(b) In London.**

[No paragraphs in this vol. of the Digest.]

**III. SALE OF BREAD.**

13. *Incorrect Weight—Sale Otherwise than by Weight—London Bread Act, 1822 (3 Geo. 4, c. 106), s. 4.*—Sect. 4 of 3 Geo. 4, c. 106, which provides that all bread sold in London and within a certain distance thereof shall be sold by weight, means that the bread must be sold by its true weight. Therefore, where a half-quartern loaf of bread was sold and at the same time weighed, and it weighed less than 2lb., which would have been its correct weight, there was a sale otherwise than by weight within the meaning of the section.

**Cox v. Bleines** ([1902] 1 K. B. 670; 71 L. J. K. B. 437; 66 J. P. 407; 86 L. T. 563; 50 W. R. 392; 18 T. L. R. 356—Div. Ct.) followed.

**HOUGHTON v. BUXTON**, 24 T. L. R. 200—Div. Ct.

14. *Time of Weighing—No Weighing in Presence of Customer—Previous Weighing with Reference to the Sale—Customer Getting Overweight—Bread Act, 1836 (6 & 7 Will. 4, c. 37), s. 4.*—The appellants, who were bakers and sellers of bread, were summoned for selling bread otherwise than by weight, contrary to sect. 4 of the Bread Act, 1836. It was proved that the man in charge of the appellants' shop had served a customer who asked for a 3d. best cottage loaf with a loaf which was not fancy bread, and for which she paid 3d. When the loaf was handed to the customer it had round it a band on which appeared the words: "Blackledge's fancy bread, 3d. and 1½d. per loaf (2d. per lb.) always overweight, varying according to fluctuations in price of flour." The loaf was not weighed in the presence of the customer, but it in fact weighed 1 lb. 11½ oz., and at some time before the customer entered the shop it had been weighed and the band had been placed round it by the manager of the shop. In the ordinary course of business, each morning the manager weighed each loaf himself, and if it exceeded 1½ lbs. put on it a band similar to the one in question. There was no dispute that at the price charged the loaf need not have weighed more than 1 lb. 8 oz.

**HELD**—that the Act was not meant to prevent people from getting a few ounces overweight, and that, there having been a weighing with reference to the sale, the appellants had committed no offence.

**BLACKLEDGE AND SONS, LD. v. BOLSHAW**, 72 [J. P. 383; 99 L. T. 60; 24 T. L. R. 696; 6 L. G. R. 885—Div. Ct.

15. *Time of Weighing—Weighing in Reference to Sale—Bread Act, 1836 (6 & 7 Will. 4, c. 37),*



**Sale of Bread—Continued.**

s.4.]—The respondent was summoned under sect. 4 of the Bread Act, 1836, for selling bread otherwise than by weight. It was proved that the loaf in question had been weighed by the respondent on being taken out of the oven, and that it was a 2 lb. loaf, but, being of a bad shape, it was put aside for consumption in the respondent's house and was sold by mistake by the respondent's brother-in-law, acting on behalf of the respondent. At the time of the sale, which took place about twelve hours after the loaf had been weighed, the loaf weighed  $1\frac{1}{2}$  oz. under 2 lbs., the loss in weight being due to evaporation. The loaf was not weighed in the presence of the purchaser before it was sold.

**HELD**—that there ought to have been a weighing in reference to the sale, and that as on the above facts there had been no weighing in reference to the sale, there had been a sale otherwise than by weight, and therefore the respondent ought to be convicted.

*Cox v. Bleines* ([1902] 1 K. B. 670; 71 L. J. K. B. 437; 66 J. P. 407; 86 L. T. 563; 50 W. R. 392; 18 T. L. R. 356—Div. Ct.) explained.

*MATTINSON v. BINLEY*, 77 L. J. K. B. 832; 72 [J. P. 346; 99 L. T. 53; 24 T. L. R. 671; 6 L. G. R. 760—Div. Ct.]

**16. Time of Weighing—Weighing in Reference to Sale—Bread Act, 1836** (6 & 7 Will. 4, c. 37), s. 4.]—The appellant was summoned for selling bread otherwise than by weight, contrary to sect. 4 of the Bread Act, 1836, and it was proved that the respondent, who was an inspector of weights and measures, having asked the man in charge of the appellant's bread van for a 2 lb. loaf, the vanman took a loaf and, on the respondent's asking what it weighed, tried to weigh it, but the weights available only enabled him to ascertain that it weighed less than 2 lb., and the weight of the bread was not ascertained. It was proved that the vanman had been instructed to tell purchasers other than regular customers that the loaves usually sold as 2 lb. loaves were not guaranteed to be more than  $1\frac{1}{4}$  lb., that a man named Lewis, who was also employed by the appellant, weighed each loaf separately every morning before it was sent out in the van, and if any loaf was found not to turn the scale at  $1\frac{1}{4}$  lb., it was not sent out. It was given in evidence that Lewis weighed all the loaves on the day in question before they were delivered to the vanman.

**HELD**—that as the loaf had never been weighed in reference to a sale of a 2 lb. loaf, the appellant was properly convicted.

*EVANS v. JONES*, 72 J. P. 481; 25 T. L. R. 5; [6 L. G. R. 1166—Div. Ct.]

**IV. MARGARINE.**

**17. Adulteration—Certificate of Analyst—Sufficiency of—Margarine—Sale of Food and Drugs Act, 1875** (38 & 39 Vict. c. 63), s. 18, and Sched.; and 1899 (62 & 63 Vict. c. 51), s. 1—*Butter and Margarine Act, 1907* (7 Edw. 7, c. 21), s. 5.]—In proceedings for an offence

against sect. 1 of the Sale of Food and Drugs Act, 1899, as extended by sect. 5 of the Butter and Margarine Act, 1907, the certificate of analysis by the principal chemist of the Government laboratories, under sect. 1, sub-sect. 5, of the Act of 1899, need not follow the form of the certificate of analysis prescribed by sect. 18 and the schedule of the Sale of Food and Drugs Act, 1875.

*FOOT v. FINDLAY* (1908), 72 J. P. 494; 25 [T. L. R. 10; 53 Sol. Jo. 32; 6 L. G. R. 1129; [1908] W. N. 204—Div. Ct.]

**18. Definition—New Substance—Imitation of Butter—Margarine Act, 1887** (50 & 51 Vict. c. 29), s. 3.]—The definition of margarine in sect. 3 of the Margarine Act, 1887, includes any substance prepared in imitation of butter, although it contains no animal fat and was unknown when that Act was passed.

All such substances must be sold as margarine and under the special conditions prescribed by the Act.

*WILKINSON v. ALTON*, 72 J. P. 252; 99 L. T. [119; 24 T. L. R. 528; 52 Sol. Jo. 457; 6 L. G. R. 544—Div. Ct.]

**19. Importation of Margarine not marked Margarine—Conviction—Whether Right of Appeal—Sale of Food and Drugs Act, 1899** (62 & 63 Vict. c. 51), ss. 1, 25.]—There is no appeal to Quarter Sessions from a summary conviction under sect. 1 of the Sale of Food and Drugs Act, 1899, for importing margarine except in packages conspicuously marked "Margarine," since by sect. 1, sub-sect. 2, "subject to the provisions of this Act . . . this section shall have effect as if it were part of the Customs Consolidated Act, 1876."

Bray, J., dissented from the judgment of the Court, being of opinion that sect. 25 of the Sale of Food and Drugs Act, 1899, which provides that "unless the context otherwise requires . . . an offence under this Act shall be treated as an offence under those Acts" (Sale of Food and Drugs Acts, defined in sect. 28), gave such an appeal.

*R. v. OTTO MONSTED, LD.*, [1906] 2 K. B. 456; [75 L. J. K. B. 629; 70 J. P. 435; 95 L. T. 526; 4 L. G. R. 942; 21 Cox, C. C. 289—Div. Ct.]

**FORBEARANCE.**

See **CONTRACT; GAMING AND WAGERING.**

**FORCIBLE ENTRY AND DETAINER.**

See **LANDLORD AND TENANT.**

**FOREIGN ATTACHMENT.**

See **PRACTICE AND PROCEDURE.**



**FOREIGN ENLISTMENT.***See* CRIMINAL LAW.**FOREIGN JUDGMENT.***See* CONFLICT OF LAWS.**FOREIGN LAW AND  
FOREIGNERS.***See* CONFLICT OF LAWS.**FOREIGN STATE, ACTION  
BY.***See* ACTION.**FORESHORE.***See* WATER AND WATERCOURSES.**FORFEITURE.***See* CRIMINAL LAW ; FISHERIES ; LAND-  
LORD AND TENANT ; REAL PRO-  
PERTY ; SETTLEMENTS ; WILLS.**FORGERY.***See* BANKERS AND BANKING ; CRIMINAL  
LAW.**FRANCHISE.***See* ELECTIONS ; FERRIES ; FISHERIES ;  
MARKETS AND FAIRS ; REAL PRO-  
PERTY.**FRAUD.***See* ACTION ; BANKERS AND BANKING ;  
BUILDERS ; COMPANIES ; CON-  
TRACT ; LIMITATION OF ACTIONS ;  
MISREPRESENTATION AND FRAUD ;  
PLEADING ; TRUSTS.**FRAUDS, STATUTE OF.***See* CONTRACT ; SALE OF GOODS ; SALE  
OF LAND.**FRAUDULENT AND VOID-  
ABLE CONVEYANCES.***See* AGENCY ; BANKRUPTCY, Nos. 32, 34,  
35 ; SETTLEMENTS.**FREEBOARD.***See* SHIPPING AND NAVIGATION.**FREEMAN.***See* LOCAL GOVERNMENT.**FREIGHT.***See* SHIPPING AND NAVIGATION.**FRIENDLY SOCIETIES.**

COL.

**I. REGISTERED SOCIETIES.**

- (a) Disputes . . . . . 242  
 (b) Dissolution . . . . . 243  
 [No paragraphs in this vol. of the Digest.]  
 (c) Nomination of Life Policy . . . 243  
 (d) Officers . . . . . 244  
 (e) Rules . . . . . 244  
 [No paragraphs in this vol. of the Digest.]

**II. COLLECTING SOCIETIES AND INDUS-  
TRIAL ASSURANCE COMPANIES** 244

[No paragraphs in this vol. of the Digest.]

**III. UNREGISTERED SOCIETIES** . . . 244*And see* CLUBS ; COUNTY COURTS,  
No. 10 ; POOR LAW, No. 3.**I. REGISTERED SOCIETIES.****(a) Disputes.**

1. *Friendly Society — Dispute — Arbitration under Rules — Enforcement — Member Claiming on Behalf of a Member — Jurisdiction to Order him to Pay Costs — Expulsion for Non-payment — Ultra vires — Claim for Sick Pay — Rules of Society — Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 68, sub-s. 5.]*—By sect. 68, subsect. 1, of the Friendly Societies Act, 1896, "Every dispute between (a) a member or person claiming through a member or under the rules of a registered society or branch, and the society or branch, or an officer thereof . . . shall be decided in manner directed by the rules of the society or branch, and the decision so given shall be binding and conclusive on all parties without appeals, and shall not be removable into any Court of law or restrainable by injunction ;

**Registered Societies—Continued.**

and application for the enforcement thereof may be made to the county court."

A rule of a friendly society provided that the decision of every arbitration and appeal committee as to a dispute should be binding immediately it was given, and any member, court, or district refusing to comply should be suspended from the order. Another rule empowered the arbitration committee to order either party to a dispute to pay costs. A member of a friendly society who had paid for his son's maintenance in a lunatic asylum, the son being also a member of the society, claimed the sick pay which was due to his son under the rules of the society. The society, after an arbitration under the rules, paid the sick pay to the father from a certain date. The father claimed it from an earlier date, and the dispute went to an arbitration committee of the society under the rules, when the committee decided against the father and ordered him to pay the costs. He refused to do so upon the ground that, as he was claiming the sick pay on behalf of his son, and not as a member, the committee had no jurisdiction to order him to pay the costs. Not having paid the costs, he was suspended under the first rule above mentioned. In an action by him for an injunction to restrain the society from suspending him:—

**HELD**—that exclusion from the society was not a proceeding to enforce compliance with the order of the arbitration committee for payment of the costs, and that the society had power under the rule to suspend the member for non-payment of the costs.

**HELD ALSO**, by Farwell and Kennedy, L. JJ.—that, even if exclusion was a proceeding to enforce compliance with the decision of the committee, sect. 68 of the Friendly Societies Act, 1896, did not forbid the enforcement of a decision of the friendly society's tribunal by means other than litigation, though it forbade application to any Court of law other than a county court.

**HELD**, further, that as the father was claiming the sick pay really for himself to recoup him the sums he had paid for his son's maintenance, the arbitration committee had power to order him to pay costs as a member; and, also, by Farwell and Kennedy, L. JJ., that, even if the father was claiming on behalf of his son, he was a "party" to the arbitration proceedings within the meaning of the rules, and could be ordered to pay the costs.

**CATT v. WOOD**, [1908] 2 K. B. 458; 77 L. J. [K. B. 756; 98 L. T. 919; 24 T. L. R. 542—C. A.]

**(b) Dissolution.**

[No paragraphs in this vol. of the Digest.]

**(c) Nomination of Life Policy.**

See also **POOR LAW**, No. 3.

**2. Nomination of Person to whom Sum is to be Paid—Signature by Mark**—"Writing under his Hand."—A nomination authenticated by the member's mark only (she being unable to write),

and by the signature of two witnesses, is not a "writing under her hand" within the meaning of sect. 56, sub-sect. 1 of the Friendly Societies Act, 1896.

**MORTON v. FRENCH**, [1908] S. C. 171—Ct. of [Sess.]

**(d) Officers.**

**3. Trustees Suing on Behalf of Society—Nominal Plaintiffs—Right of Directors to Change Solicitor.**—By the rules of a society regulated by 10 Geo. 4, c. 56, the property of the society was vested in the trustees of the society for the time being, in whose names any action concerning the property of the society should be brought or defended. The trustees brought actions on behalf of the society, and with the sanction of the society they employed a firm of solicitors to conduct the actions.

**HELD**—that the trustees were nominal plaintiffs, the real litigants being the society, and that therefore the board of management of the society had power to direct the trustees as to any change of solicitors.

**LASKEY v. RUNTZ**, 24 T. L. R. 496; 52 Sol. Jo. [459—Eve, J.]

**(e) Rules.**

[No paragraphs in this vol. of the Digest.]

**II. COLLECTING SOCIETIES AND INDUSTRIAL ASSURANCE COMPANIES.**

[No paragraphs in this vol. of the Digest.]

**III. UNREGISTERED SOCIETIES.**

**4. Association not a Friendly Society—Motion for Receiver—Expenditure Contrary to Objects for which Funds Subscribed—Irregularity—Trust Funds.**—Where an "association," called by its organisers a "National Slate Club," is carried on as if it were a friendly society, but without the restrictions of the Friendly Societies Acts, where salaries, commissions and advertisement expenses have been paid, which payments were not the objects for which a large number of persons have subscribed, and where actuarial insurance data are against the possibility of performance of the promises made to subscribers, the funds at the disposal of the association are merely trust funds held on certain defined trusts, and a receiver must be appointed on the application of persons interested, however small their pecuniary interest may be.

**IN RE ONE AND ALL SICKNESS AND ACCIDENT [INSURANCE ASSOCIATION, ROSSINGTON v. TRATHEN**, *Times*, December 12th, 1908—Warrington, J.]

Subsequently an appeal to the Court of Appeal was dismissed by consent.—*Times*, December 18th, 1908.

**5. Registration—Memorandum of Association—Title to Sue.**—The Aberdeen Master Masons' Incorporation, Ltd., was incorporated under the Companies Acts, and the memorandum of association provided that the objects of the incorporation were, *inter alia*, "(1) To take over the whole or any of the assets and liabilities of the unincorporated association known as 'The

**Unregistered Societies—Continued.**

Aberdeen Master Masons' Association'; (13) To assist any institution with objects similar to those of the trade 'and not being a "trade union"'; "(22) To do all lawful things conducive to the attainment of the above object, 'provided that the incorporation shall not impose on its members or support with its funds any regulation which, if an object of the incorporation, would make it a trade union.'" An action having been raised by the incorporation against a member for payment of dues, the defender averred that the association, whose assets and liabilities were taken over by the pursuers, was a trade union, and that the pursuers were *de facto* acting as a trade union, and pleaded that the pursuers, being a trade union, were not validly registered as a company, and had no title to sue.

**HELD**—that as any act which would make the incorporation a trade union would be null and void under the above-quoted clauses of the memorandum of association, the incorporation could not be a trade union, and plea of "no title to sue" must be repelled.

ABERDEEN MASTER MASONS' INCORPORATION v.  
[SMITH, [1908] S. C. 669; 45 Sc. L. R. 484—  
Ct. of Sess.]

**6. Qualification for Membership—Objections to Admission Pleadable by Company and not by Member—Liability for Dues.**—At a meeting on July 8th, 1904, of the directors of the Aberdeen Master Masons' Incorporation, Ltd., incorporated under the Companies Acts, S. was admitted as a member of the incorporation. On account of his age, and for other reasons, S. was, in accordance with the articles of association, ineligible for membership, but he accepted membership and acted as a member till March 20th, 1906, when he sent in a letter of resignation. On June 4th, 1906, the incorporation sued S. for payment of dues incurred by him prior to the date of his resignation. S. pleaded that he never was a member of the incorporation, and had consequently never incurred the dues.

**HELD**—that the defender was liable on the ground that he was a member of the incorporation, the objections to his admission being pleadable by the company and by no one else.

*Seemle*, also per Lord Kinnear, whether he was technically a member or not, he was bound by his agreement with the incorporation.

ABERDEEN MASTER MASONS' INCORPORATION v.  
[SMITH, [1908] S. C. 669; 45 Sc. L. R. 484—  
Ct. of Sess.]

**FUGITIVE OFFENDERS.**

*See* EXTRADITION.

**GAME.****I. GAME.**

(a) Ground Game . . . . .  
[No paragraphs in this vol. of the Digest.]

(b) Licences . . . . .  
[No paragraphs in this vol. of the Digest.]  
(c) Trespass and Poaching . . . . .  
[No paragraphs in this vol. of the Digest.]

**II. SPORTING RIGHTS, ETC. . . . .**  
[No paragraphs in this vol. of the Digest.]**GAMING AND WAGERING.**

I. GAMING CONTRACTS . . . . .	COL. 246
II. GAMES AND GAMING HOUSES . . . . .	250
[No paragraphs in this vol. of the Digest.]	
III. BETTING HOUSES AND BETTING . . . . .	250
IV. LOTTERIES . . . . .	251

*And see* BANKRUPTCY, No. 21; CONFLICT OF LAWS; CRIMINAL LAW; INSURANCE; PLEADING.

**I. GAMING CONTRACTS.**

**1. Betting Debts—Cheque Given for Bets—Part of Consideration Money Lent—Post-dated Cheque—Gaming Acts, 1710 (9 Anne, c. 41), s. 1; 1835 (5 & 6 Will. 4, c. 41), s. 1; and 1845 (8 & 9 Vict. c. 109), s. 18.]**—The defendant, when at a race meeting in France, lost bets to the plaintiff to the amount of £1,790, and the defendant gave to the plaintiff his cheque for £2,000 drawn upon an English bank and post-dated two or three days and the plaintiff handed to the defendant the balance of £210 in cash.

**HELD**—that the plaintiff was not entitled to recover upon the cheque.

BROWNE v. BAILEY, 24 T. L. R. 644—Darling, J.

**2. Betting Debts—Refusal of Court to Entertain Action.]**—In an action in the county court against a bookmaker to recover a sum of money won on a bet on a horse race the defendant did not plead the Gaming Acts, but raised a point upon the construction of one of the rules under which he betted. The county court judge gave judgment for the plaintiff. Upon appeal by the defendant:—

**HELD**—that the Court would of its own motion refuse to allow any process of law to be invoked for the purpose of enforcing the bet, and the proper course was to set aside the judgment, giving no costs to either party.

LUCKETT v. WOOD, 24 T. L. R. 617—Div. Ct.

**3. Betting Debts—Forbearance to Declare Defendant Defaulter—New Contract—Gaming Acts, 1835 (5 & 6 Will. 4, c. 41), s. 1; and 1845 (8 & 9 Vict. c. 109), s. 18.]**—The defendant, who had been betting with the plaintiffs, owed them, in August, 1908, a sum of £56 in respect of the bets. The plaintiffs applied for payment, and received in reply a letter in which the defendant stated that he could not pay at the moment, and added that he was negotiating a business which, when successful, would allow him to pay at an early date, and he asked them on that account to keep the matter private, as otherwise his



**Gaming Contracts—Continued.**

chance of success would be injured. The plaintiffs wrote that they would treat the matter as confidential, but wished the defendant to say when they might expect a cheque. In a further letter the plaintiffs said they would expect a settlement by September 21st, but to that the defendant sent no reply. The plaintiffs knew that the defendant belonged to the Badminton Club, but owing to their agreement to wait they alleged that they refrained from bringing his conduct before the committee of that club and from posting him as a defaulter at the Newmarket Rooms.

HELD—that there was no consideration for a fresh promise by the defendant to pay the £56, and that the action therefore failed.

LADBROKE & CO. v. BUCKLAND, 25 T. L. R. 55  
[—Lord Alverstone, C. J.]

**4. Betting Debts — Forbearance to Declare Defendant a Defaulter—New Contract—Right of Action—Promissory Note—Stamp—Gaming Acts, 1835 (5 & 6 Will. 4, c. 41), s. 1, and 1845 (8 & 9 Vict. c. 109), s. 18—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 33.]**—The defendant, a solicitor's articled clerk, was sued by the plaintiff, a turf commission agent, for £550 alleged to be due under an agreement signed by the defendant. The defendant had been betting for some time with the plaintiff, and at the beginning of July, 1908, a sum of £567 9s. 9d. was owing by the defendant to the plaintiff in respect of bets. A representative of the plaintiff interviewed the defendant on the subject of payment, and intimated that if the money was not paid the defendant would be posted as a defaulter. The defendant said that was nothing to him, as he did not belong to Tattersall's or any sporting club, but eventually he signed a document which, after admitting his liability, ran as follows:—"In consideration of [the plaintiff's] forbearance to sue, and of the fact that I shall not be registered as a defaulter, either in the list compiled by the Turf Register or at Tattersall's or any of the sporting clubs, I hereby undertake to pay the sum of £17 9s. 9d. by July 9th, 1908, and to make immediate arrangements with regard to the balance of £550." The £17 9s. 9d. was paid, but not the balance of £550.

HELD—that there was sufficient consideration to support the promise to pay the £550, there being nothing to show that the defendant regarded as an empty threat the intimation that if he did not pay he would be posted as a defaulter.

HELD, further, that the document signed by the defendant was not a promissory note within the meaning of the Stamp Act, 1891.

HODGKINS v. SIMPSON, 25 T. L. R. 53—Lord Alverstone, C. J.

**5. Betting Debts — Forbearance to Declare Defendant Defaulter—Giving Time—New Contract—Right of Action—Gaming Acts, 1835 (5 & 6 Will. 4, c. 41), s. 1; and 1845 (8 & 9 Vict. c. 109), s. 18.]**—The defendant, who was a bookmaker, lost bets on horse races to the plaintiff,

who was also a bookmaker, and the defendant gave to the plaintiff a cheque for the amount of the bets so lost. The defendant requested the plaintiff not to present the cheque for a few days, as certain moneys had not arrived. The plaintiff did so, and later on the defendant requested the plaintiff to hold the cheque over and not to tell his customers, as if he told his other customers he would be ruined. The plaintiff did so, and a sum on account was paid. The balance not being paid, the plaintiff sued to recover it upon the ground of a new contract to pay the amount founded upon good consideration.

HELD (by Gorell Barnes, P., and Farwell L. J., Fletcher Moulton, L. J., dissenting)—that the plaintiff was entitled to recover, upon the ground that there was a new contract that in consideration that the plaintiff would give the defendant a reasonable time within which to pay the amount, and would forbear from declaring him a defaulter if he paid within that further time, so as to avoid the consequences of being declared a defaulter, the defendant would pay to the plaintiff the amount which both parties considered was due to the plaintiff in honour, though not in law, within that time; and that this new contract, having been accepted and acted on by both parties, was valid and enforceable at law.

HYAMS v. STUART KING, [1908] 2 K. B. 696;  
[77 L. J. K. B. 794; 99 L. T. 424; 24 T. L. R. 675; 52 Sol. Jo. 551—C. A.]

**6. Betting Debts—Forbearance to Sue—New Consideration.]**—In October, 1899, the bankrupt, an outside broker, lost a bet to a member of the Stock Exchange, and gave a bill for the amount due in March, 1900. The bankrupt was unable to meet the bill at maturity, and feared that if his position became known some large accounts which he had opened on the Stock Exchange would be closed. He confided his fears to his creditor, and asked his forbearance, in consideration for which he accepted a new bill for two months, dated March 17th, 1900. He failed to meet the new bill, and the creditor recovered judgment upon it, but took no further steps until the debtor became bankrupt, when he presented a proof against the estate.

HELD—that the debt was a gaming debt, and not provable, for there was no evidence of any fresh consideration to take the second bill out of the operation of the Gaming Acts. To constitute such consideration there must be evidence of threats on the part of the creditor to do some lawful act. The mere fact that the debtor fears the consequences of not paying the debt is insufficient.

RE COMAR, EX PARTE RONALD, 52 Sol. Jo. 642  
[—C. A.]

**7. Betting Debts—Forbearance to Sue—New Contract—Fresh Consideration.]**—In an action by a bookmaker to recover a sum of money, the defendant pleaded that the claim was in respect of betting transactions. The plaintiff admitted that the amount sued for was wholly in respect of bets upon horse-races made by the plaintiff with the defendant, but relied on the fact that

**Gaming Contracts—Continued.**

in compliance with a request contained in a letter written by the defendant he forebore to sue the defendant, and had given him time to get the money, relying on the defendant's promise that if this was agreed to he would not only paid the debt in full, but interest up to payment.

**HELD**—that the plaintiff having shown that there was a good consideration for the payment of the debt, apart from the original consideration, he was entitled to judgment.

**GOODSON v. GRIERSON**, 52 Sol. Jo. 599—Channell, J.

**8. Betting Debts—Post-dated Cheque—Giving Time—Refraining from having Defendant Posted at Club—Consideration—Gaming Acts, 1845 (8 & 9 Vict. c. 109), and 1892 (55 & 56 Vict. c. 9).—**The defendant, who was a bookmaker, owed the plaintiff, who was also a bookmaker, £375 for money lost on bets. The defendant admitted that he owed the plaintiff £355, and asked him to accept a post-dated cheque for that amount in settlement. The plaintiff agreed to this, and the defendant sent him his cheque for that amount post-dated fourteen days. The cheque upon presentation was dishonoured. The defendant then asked for further time, which was given, but the defendant did not pay, and the plaintiff, about seven weeks after the cheque was dishonoured, brought an action to recover the £355. The defendant was a member of a club frequented by sporting men, at which he might have been posted as a defaulter if he had failed to pay his betting debts.

**HELD**—that there was sufficient consideration to support the promise to pay the £355, inasmuch as it was a settlement of a claim for a larger amount, and as time was given to him by the plaintiff to pay the amount, the defendant being desirous of not being posted as a defaulter at his club or at any race meeting.

**Chapman v. Franklin** ((1905), 21 T. L. R. 515) distinguished.

**GOODSON v. BAKER**, 98 L. T. 415; 24 T. L. R. [338; 52 Sol. Jo. 302—Lawrence, J.

**9. Money Lent for Gaming—Right to Recover—Gaming Acts, 1710 (9 Anne, c. 14), s. 1, and 1835 (5 & 6 Will. 4, c. 41), s. 1.—**Money lent for the purpose of being used by the borrower for gaming in a country where such gaming is not illegal, may be recovered back.

**Quarrier v. Colston** (1 Phillips, 147) followed. **M'Kinnell v. Robinson** (3 M. & W. 434) and **Applegarth v. Colley** (10 M. & W. 723) distinguished.

**SAXBY v. FULTON**, 99 L. T. 92; 24 T. L. R. 856 [—Bray, J.

**10. Partnership between Bookmakers—Action for Account.—**The Court will not entertain an action for an account by one partner in a betting business against the other partner.

**THOMAS v. DEY**, 24 T. L. R. 272—Darling, J.

**II. GAMES AND GAMING HOUSES.**

[No paragraphs in this vol. of the Digest.]

**III. BETTING HOUSES AND BETTING.**

**11. Betting—Loitering for the Purpose of Settling Bets—Second Offence—What is—Previous Conviction not under same Statute—Using Street for Betting—Bye-law—Street Betting Act, 1906 (6 Edw. 7, c. 43), s. 1 (1).**

To entitle Justices to convict as for a second offence under sect. 1 of the Street Betting Act, 1901, the previous offence must have been an offence under the same statute and not one under (e.g.) a bye-law against street betting.

**R. v. STONE, EX PARTE SETON**, 72 J. P. 388; 99 [L. T. 88—Div. Ct.

**12. Betting—Invitation to Bet by Circulars—Address to which Communication is to be Sent—Betting Acts, 1853 (16 & 17 Vict. c. 119), ss. 1, 7, and 1874 (37 & 38 Vict. c. 15), s. 3 (3).—**In order to sustain a conviction under sect. 3 (3) of the Betting Act, 1874, for sending out circulars inviting persons to bet, which circulars in fact contain an address to which communications are to be sent, it is not necessary that the circulars should invite persons to resort to that address, or that the bets should be accepted at that address.

**STOTT v. RENTON**, [1907] S. C. (J.) 88—Ct. of [Sess.

**13. Using House for Betting—Isolated Instance—Evidence—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 17.—**An information was laid against the appellant, a licensed innkeeper, under sect. 17 of the Licensing Act, 1872, for using his licensed house and premises for the purpose of betting with persons resorting thereto, in contravention of the Betting Act, 1853. The evidence was that a man on one occasion went into the house and saw the appellant and gave him 2s., and asked him as a favour whether he would put 1s. each way on "Lady Hasty" for him for the "Cambridgeshire" if he (the appellant) was going to Wolverhampton. The man got no ticket or receipt for the money.

**HELD**—that this being an isolated instance there was no evidence that the appellant was using his house for the purpose prohibited by the Betting Act, 1853, and that he therefore could not be convicted.

**JAYES v. HARRIS**, 72 J. P. 364; 99 L. T. 56—[Div. Ct.

**14. Using Premises for Betting—Isolated Instance—Proof of Bet on One Occasion Only.—**A police constable went into the appellant's shop and there made a bet with him of 2s. on a horse-race. The constable deposited the 2s. with the appellant, and gave him a piece of paper on which was written the amount of the bet and the name of the horse.

**HELD**—not sufficient evidence to justify the conviction of the appellant under sect. 3 of the Betting Houses Act, 1853.

Per Lord O'Brien, C. J.—The fact that a bookmaker made one bet in a house in which he



**Betting Houses and Betting—Continued.**

resided is not enough to attach to the house the character of a betting establishment.

Per Gibson, J.—In certain circumstances a single bet in a house or place accepted by the person using same, without any proof beyond the transaction itself, and the conduct and language of the parties, might warrant an inference of guilty user.

M'CONNELL v. BRENNAN, [1908] 2 Ir. R. 411—  
[K. B. D.]

**IV. LOTTERIES.**

**15. Limerick Competition—Adding Last Line—Gaming Act, 1802 (42 Geo. 3, c. 119), s. 1.**—The owners of a journal announced in an issue of the journal a competition in which they offered a prize of £300 for the best last line of a limerick. They also offered a second prize of £100, two more of £50 each, and stated that they would "send sovereigns to a hundred other readers by way of consolation." The conditions, so far as material, were as follows:

"With each entry a postal order for 6d. must be sent. . . . Cut out the printed lines given in the unfinished limerick coupon below. Then write clearly in ink the line that suggests itself as being the smartest and most appropriate completion of the limerick. . . . Entries must reach this office not later than the morning, Wednesday, the 25th of December. We can enter into no correspondence whatever appertaining to the contest, and the editor's decision must in all cases be accepted as final. The names of the winners in this competition will be announced in the issue of *Ideas* on sale the 3rd of January, 1908 (dated the 9th of January), and in the *Sunday Chronicle* of the 5th of January."

Each coupon had printed upon it the following condition to be signed by the competitor:—

"I agree to abide by the decision published in *Ideas* and the *Sunday Chronicle*, and to accept it as final; and I enter only on this understanding, and I agree to the conditions printed on this page."

The announcement stated further:

"We would emphasise the fact that every coupon is carefully examined by a competent staff, and that every effort is judged entirely on its merits."

The plaintiff claimed to have sent in a last line identical with that which was announced as the winning line, and in respect of which the prize of £300 was awarded to another competitor.

In an action brought by the plaintiff to recover the £300:

HELD—that, taking into consideration all the circumstances, especially the short time to be taken in adjudicating, the competition was a lottery, and that the action was not maintainable.

BLYTH v. HULTON & CO., LD., 72 J. P. 401; 24  
[T. L. R. 719; 52 Sol. Jo. 599—C. A.]

**16. Newspaper—Distribution of Metals Gratuitously—Winning Prizes Announced in Newspaper—Gaming Act, 1802 (42 Geo. 3, c. 119).**—

The proprietor of a weekly penny newspaper caused a quantity of medals to be distributed gratuitously, each medal being a number, and an intimation that it might entitle the holder to a prize. One of the medals selected arbitrarily carried a right to a prize, and the number of the medal was announced in the newspaper. The persons distributing the medals were never employed to sell the paper, and a copy of the paper was never sold from the office with one of the medals. Anyone who asked for a medal was given one. A file of the paper was kept at the office, which could be inspected, free of charge, by any person to see if he had won a prize, and there was no condition that a person holding a medal must purchase a copy of the paper to entitle him to a prize, the object of the scheme being to advertise the paper and increase its circulation.

HELD—that, as many medal holders bought copies of the paper, the scheme was a lottery within the Gaming Act, 1902, although nothing was charged for the medals to individuals.

WILLIS v. YOUNG, [1907] 1 K. B. 448; 76 L. J.  
[K. B. 390; 71 J. P. 6; 96 L. T. 155; 23  
T. L. R. 23; 21 Cox, C. C. 362—Div. Ct.]

**17. Keeping Place for Exercising a Lottery—Isolated Use—Gaming Act, 1802 (42 Geo. 3, c. 119), s. 2.**—The respondents were charged under sect. 2 of the Gaming Act, 1802, with keeping a certain place for the purpose of exercising a lottery therein. The evidence showed that they had used the place for drawing a lottery on only a single occasion.

HELD—that they had committed no offence under the section, which is aimed at the habitual user of a place.

MARTIN v. BENJAMIN AND ANOTHER, [1907] 1  
[K. B. 64; 76 L. J. K. B. 81; 71 J. P. 30; 96  
L. T. 197; 23 T. L. R. 53; 21 Cox, C. C. 378  
—Div. Ct.]

**GARNISHEE ORDERS.**

See COUNTY COURT; EXECUTION.

**GAS.**

COL.

**GAS COMPANIES AND SUPPLY OF GAS.**

- (a) In General . . . . . 252
- (b) Mains, Pipes, Lamps . . . . . 254

[No paragraphs in this vol. of the Digest.]

And see EASEMENTS; HIGHWAYS;  
METROPOLIS; PUBLIC HEALTH.

**(a) In General.**

**1. Illuminating Power—Test—Argand Burner—Improved Pattern—Brentford Gas Act, 1868 (31 & 32 Vict. c. xl), s. 21—Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), s. 36.**—Sect. 21 of the Brentford Gas Act, 1868, enacts that all the gas supplied by the appellant company shall be of such quality as to produce from an Argand burner having fifteen holes and a seven-inch



**In General—Continued.**

chimney, and consuming five cubic feet of gas per hour, a light equal in intensity to the light produced by fourteen sperm candles of six in the pound, each burning a hundred and twenty grains per hour. The respondents, the local authority, under their statutory powers appointed a gas examiner to test the gas supplied by the appellants. The result of the gas examiner's test showed that the illuminating quality of the appellants' gas was equivalent to 11.24 candles. For the purpose of the test the gas examiner used an Argand burner, having fifteen holes and a seven-inch chimney and consuming five cubic feet of gas per hour, of a character and pattern invented by a Dr. Letheby previously to 1868, and known as a Letheby-Sugg burner. Such pattern of burner was, at the passing of the Brentford Gas Act, 1868, the best burner at that time known for testing the illuminating power of gas, but since that date considerable improvements have been made in such burner.

The appellants were summoned for supplying gas of illuminating quality inferior to that required by sect. 21 of the above Act.

**HELD**—that the appellants were not liable to be convicted upon the result of the test made with the pattern of Argand burner used by the gas examiner.

**BRENTFORD GAS CO. v. CHISWICK URBAN**  
[DISTRICT COUNCIL, 72 J. P. 378; 6 L. G. R.  
725—Div. Ct.]

**2. Purchase of Mains, Pipes, and other Works within District—Price and Consideration to be Determined by Arbitration in Accordance with Provisions of Lands Clauses Acts—Compensation for Severance—Compensation for Loss of Revenue—Wolstanton United Urban District Council Gas Act, 1906 (6 Edw. 7, c. cxliii.), s. 9.]**—The predecessors of the B. corporation purchased a gas undertaking under the powers of a special Act of 1877, which enacted that the limits of the Act should include, *inter alia*, the township of W., provided that nothing in the Act should prejudice any application by any sanitary authority formed for or to include that township for parliamentary powers to supply the township with gas, and that if such powers were granted the predecessors of the corporation should sell, and the sanitary authority should purchase, all mains, pipes and other works within the township at the price to be fixed in default of agreement by arbitration.

By a special Act of 1906, the W. urban district council were empowered to supply gas in their district. Sect. 9 of the Act provided, that the corporation should sell, and the council should purchase, all the mains, pipes, and other works within the district, and that upon the completion of the purchase all rights of the corporation to supply gas within the district should cease. Subsect. (2) provided that the sale should be for such "price and consideration" as should be agreed upon, or failing agreement, as should be determined by arbitration in accordance with the provisions of the Land Clauses Acts with reference to the taking of lands otherwise than by agreement, and that in the construction of

the said provisions, the expression "lands" should mean "the mains, pipes, and other works aforesaid."

**HELD**—that the corporation were not entitled to compensation (1) for severance of the mains, pipes, and works in the district from their other mains, pipes, and works; (2) for loss of revenue caused by the cessation of their power to supply gas within the district.

**IN RE WOLSTANTON UNITED URBAN DISTRICT**  
[COUNCIL AND BURSLEM CORPORATION,  
72 J. P. 28; 6 L. G. R. 523—Bray, J.]

**(b) Mains, Pipes, and Lamps.**

[No paragraphs in this vol. of the Digest.]

**GIBRALTAR.**

*See* DEPENDENCIES AND COLONIES.

**GIFTS.**

I. IN GENERAL . . . . .

II. DONATIO MORTIS CAUSA.

(a) Subject Matter . . . . .

(b) Validity . . . . .

*See* CHUSES IN ACTION; EXECUTORS,  
No. 1.

**GOODWILL.**

*See* PARTNERSHIP; SALE OF GOODS.

**GROUND GAME.**

*See* GAME.

**GROUND RENTS.**

*See* LANDLORD AND TENANT; REAL  
PROPERTY AND CHATTELS REAL;  
SALE OF LAND.

**GROWING CROPS.**

*See* AGRICULTURE; BILLS OF SALE;  
LANDLORD AND TENANT; SALE OF  
LAND.

**GUARANTEE.**

I. IN GENERAL . . . . .	COL. 255
[No paragraphs in this vol. of the Digest.]	
II. DISCHARGE OF SURETY . . . . .	255
<i>And see BILL OF EXCHANGE ; EQUITY ; INSURANCE ; MORTGAGES.</i>	

I. IN GENERAL.
[No paragraphs in this vol. of the Digest.]
II. DISCHARGE OF SURETY.

1. *Giving Time to Principal Debtor—Joint Promissory Note—Conditional Agreement with One Maker.*—The defendant and A. signed a joint and several promissory note in consideration of an advance to the latter. The plaintiffs afterwards obtained judgment against A. for the balance due on the note and for a sum for goods sold and delivered. On the same day an arrangement was made whereby A. was to pay £10 a week later and further sums monthly thereafter, and to pay cash for any other goods supplied, while the plaintiffs agreed not to press their claim. This arrangement was not communicated to the defendant.

HELD—that the agreement constituted a giving of time to the principal debtor; that it was immaterial that there were conditions imposing obligations on the debtor, and that therefore defendant, as surety, was relieved from liability on the note.

BELLINGHAM & Co. *v.* HURLEY, *Times*, [April 4th, 1908—C. A.]

**GUARDIAN AND WARD.**

*See* INFANTS.

**GUARDIANS OF POOR.**

*See* POOR LAW.

**GUN LICENCES.**

*See* GAME ; REVENUE.

**HABEAS CORPUS.**

*See* CONSTITUTIONAL LAW ; CROWN PRACTICE.

**HACKNEY CARRIAGES.**

*See* METROPOLIS ; STREET TRAFFIC ; TRAMWAYS.

**HARBOURS.**

*See* SHIPPING AND NAVIGATION ; WATER AND WATERCOURSES.

**HAWKERS AND PEDLARS.**

*See* MARKETS AND FAIRS.

**HEALTH.**

*See* PUBLIC HEALTH.

**HEARSAY EVIDENCE.**

*See* EVIDENCE.

**HEIRLOOM.**

*See* REAL PROPERTY AND CHATTELS  
REAL ; SETTLEMENTS ; TRUSTS.

**HERIOT.**

*See* COPYHOLDS AND MANORS.

**HIGH TREASON.**

*See* ALIENS ; CRIMINAL LAW ; CROWN  
AND CONSTITUTION.

**HIGHWAYS, STREETS, AND  
BRIDGES.**

I. ORIGIN OF HIGHWAYS.	COL.
(a) Adoption . . . . .	258
[No paragraphs in this vol. of the Digest.]	
(b) Dedication . . . . .	258
(c) Prescription . . . . .	259
[No paragraphs in this vol. of the Digest.]	
II. RIGHT OF PASSAGE . . . . .	259
[No paragraphs in this vol. of the Digest.]	
III. ROADSIDE STRIPS AND DITCHES.	
(a) Adjoining Owners . . . . .	259
[No paragraphs in this vol. of the Digest.]	
(b) Presumption of Dedication . . . . .	259
IV. OWNERSHIP OF SOIL . . . . .	260
[No paragraphs in this vol. of the Digest.]	
V. DIVERSION . . . . .	260
VI. MANAGEMENT AND CONTROL OF HIGHWAYS . . . . .	260
[No paragraphs in this vol. of the Digest.]	
VII. REPAIR AND MAINTENANCE OF HIGHWAYS.	
(a) Awarded Road . . . . .	260
[No paragraphs in this vol. of the Digest.]	
(b) Drainage . . . . .	260
[No paragraphs in this vol. of the Digest.]	

# Repair and Maintenance of Highways— *Continued.*

	COL.
(c) Indictment for Non-repair . . . . .	260
[No paragraphs in this vol. of the Digest.]	
(d) Mandamus . . . . .	260
[No paragraphs in this vol. of the Digest.]	
(e) Material for Repair . . . . .	260
(f) Miscellaneous . . . . .	262
(g) Misfeasance . . . . .	262
[No paragraphs in this vol. of the Digest.]	
(h) Mode of Repair . . . . .	262
(i) <i>Ratione Tenuræ</i> . . . . .	262
[No paragraphs in this vol. of the Digest.]	

## VIII. EXTRAORDINARY TRAFFIC.

(a) Contributory Negligence of Authority . . . . .	263
[No paragraphs in this vol. of the Digest.]	
(b) Liability for Damage . . . . .	263
(c) Limitation of Action . . . . .	264
(d) Practice . . . . .	265

## IX. OBSTRUCTION OF HIGHWAYS . . . . . 265

### X. BRIDGES.

(a) Erection and Repair . . . . .	266
(b) Tolls . . . . .	267
[No paragraphs in this vol. of the Digest.]	

## XI. STATUTORY INTERFERENCE WITH HIGHWAYS.

(a) Railway Companies . . . . .	267
[No paragraphs in this vol. of the Digest.]	
(b) Tramways . . . . .	267
[No paragraphs in this vol. of the Digest.]	
(c) Water and Canal Companies . . . . .	267
[No paragraphs in this vol. of the Digest.]	

## XII. PRIVATE STREET WORKS.

(a) Charge on Premises . . . . .	268
[No paragraphs in this vol. of the Digest.]	
(b) Exemptions from Liability as Owner . . . . .	268
[No paragraphs in this vol. of the Digest.]	
(c) Local Act . . . . .	268
[No paragraphs in this vol. of the Digest.]	
(d) Miscellaneous . . . . .	268
(e) New Streets . . . . .	270
(f) Notices . . . . .	270
(g) Objections . . . . .	271
[No paragraphs in this vol. of the Digest.]	
(h) Owners . . . . .	271
[No paragraphs in this vol. of the Digest.]	
(i) Property in Street . . . . .	271
[No paragraphs in this vol. of the Digest.]	
(k) "Street" . . . . .	271

## XIII. MISCELLANEOUS . . . . . 271

[No paragraphs in this vol. of the Digest.]

And see BURIAL, No. 2; FERRIES; LOCAL GOVERNMENT; METROPOLIS; NEGLIGENCE, Nos. 1, 2; NUISANCE; STREET TRAFFIC; TRAMWAYS, Nos. 4, 5, 6; WATERWORKS, No. 2.

Y.D.

## I. ORIGIN OF HIGHWAYS.

### '(a) Adoption.

[No paragraphs in this vol. of the Digest.]

### (b) Dedication.

1. *Churchway—Dedication as—Not Known to the Law.*—*Semble*, the law does not allow a person to dedicate a road to the public with only such rights as they would have over a churchway.

FARQUHAR v. NEWBURY RURAL DISTRICT [COUNCIL, 25 T. L. R. 39—C. A.]

2. *Evidence—Rebutting Evidence—Waste of Manor—Strip of Waste set out as Private Occupation Road under Inclosure Award—User by Public—Subsequent Railway Cutting across the Road—Continued User by Public as a Footway—Presumption of Dedication rebutted.*—In an action against a local authority by the landowners on each side of a lane claiming a declaration that the lane was not a public right of way, it appeared that the lane originally formed part of the waste of a manor, and was in 1817 set out as a private occupation road by the award of commissioners under a private Inclosure Act; that in 1855 a railway was constructed across the lane, since when the railway line had been permanently fenced on both sides. There was some evidence of user of the lane by the public for all purposes prior to 1855, and since that date as a footway.

HELD—that the user prior to 1855 was insufficient to raise the presumption of dedication to the public, that the construction of the railway line across the lane was strong evidence against any intention to dedicate, that the subsequent user was immaterial, and therefore that the landowners were entitled to succeed.

HOLLOWAY v. EGHAM URBAN DISTRICT COUNCIL, 72 J. P. 433; 6 L. G. R. 929—Neville, J.

3. *Evidence—User—Acknowledgment of Title by Predecessor.*—In 1871 a piece of land alongside a highway leading over a public bridge was enclosed and allowed to be occupied by W., who acknowledged the title of the improvement commissioners (the highway authority). W. died in 1890, and the defendant (his heir) had occupied since and claimed to have acquired a title under the Statute of Limitations.

There was evidence that before 1871 the piece of land had been used for loading and unloading barges, and for turning cattle on when two lots of cattle would otherwise have met on the bridge.

HELD—that the piece of land formed part of an ancient highway, and that no title had been acquired by the defendant.

ST. IVES CORPORATION v. WADSWORTH, 72 J. P. [73; 6 L. G. R. 306—Eady, J.]

4. *Land in Settlement—Possibility of Dedication—Presumption—Assent of all Parties.*—A roadway across an estate had been so used by the public since the year 1842 as to compel the Court to infer that it had been dedicated to the public, if dedication were possible.



**Origin of Highways—Continued.**

From 1836 to 1849 the estate across which the roadway ran was settled upon P. as tenant for life, with remainder in fee to H. R. E. P. never resided at S. during this period, while H. R. E. was in the real possession and control of the estate, laying out the road in question in 1842 or 1843, and acquiescing in its user by the public both then and after P.'s death in 1851. In 1849 the estate had been resettled.

**HELD**—that the facts justified the presumption of a dedication of this road to the public by P. and H. R. E. between 1836 and 1849.

**FARQUHAR v. NEWBURY RURAL DISTRICT [COUNCIL, [1908] 2 Ch. 586; 72 J. P. 445]**—Warrington, J.

Affirmed, 25 T. L. R. 39; 53 Sol. Jo. 46; [1908] W. N. 213—C. A.

**5. Lessee—Consent of Freeholder—Whether Termor can Dedicate.**—A leaseholder cannot dedicate land to the use of the public without the consent of the owner of the fee.

*Seemle*, per Neville, J.—land cannot be dedicated to the use of the public for a term, *e.g.*, by a leaseholder, for the period of his lease; dedication must be in perpetuity.

**HELD**—that certain forecourts, used by shopkeepers for depositing goods, had not been dedicated, for there was no evidence from which the freeholder's consent could be inferred; and moreover the user for deposit of goods negatived dedication.

Decision of Neville, J. ([1907] 1 Ch. 704; 76 L. J. Ch. 313; 71 J. P. 219; 96 L. T. 614; 23 T. L. R. 366; 5 L. G. R. 577) affirmed on this point.

**CORSELLIS v. LONDON COUNTY COUNCIL, [1908] 1 Ch. 13; 77 L. J. Ch. 120; 71 J. P. 561; 98 L. T. 475; 24 T. L. R. 80; 6 L. G. R. 78—C. A.**

**(c) Prescription.**

[No paragraphs in this vol. of the Digest.]

**II. RIGHT OF PASSAGE.**

[No paragraphs in this vol. of the Digest.]

**III. ROADSIDE STRIPS AND DITCHES.****(a) Adjoining Owners.**

[No paragraphs in this vol. of the Digest.]

**(b) Presumption of Dedication.**

**6. Highway—Roadside Strip—Lateral Fence—Presumptive Boundary of Road—Dedication.**—A strip of open waste land lay between the metalled part of a public highway and the adjoining lateral fence to the east of the highway. The plaintiffs claimed this strip as part of the highway.

**HELD**—that, on the facts, the fence was not put up in reference to the highway, but was an original boundary of a close of land through which the highway had been subsequently made, and that therefore no presumption arose that the fence indicated the boundary of the highway; that the acts of user proved did not

amount to a dedication to the public, and that the plaintiffs' case failed.

**ATTORNEY-GENERAL AND CROYDON RURAL [DISTRICT COUNCIL v. MOORSOM-ROBERTS, 72 J. P. 123; 6 L. G. R. 470—Eve, J.]**

**IV. OWNERSHIP OF SOIL.**

[No paragraphs in this vol. of the Digest.]

**V. DIVERSION.**

*See also* BURIAL, No. 2.

**7. Plan—"Metes, Bounds, and Admeasurement"—Certificate of Justices—Mandamus—Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 85.**—By sect. 85 of the Highway Act, 1835, where a public highway is proposed to be diverted a plan is to be delivered to the two justices who view the highway, describing the old and the proposed new highway, "by metes, bounds, and admeasurements." An Ordinance map was delivered to the justices which showed the old and the proposed new highways and the width of the new one, but did not state in writing their respective lengths.

**HELD**—insufficient, although there was a scale on the map by reference to which the length might be calculated.

It is for Quarter Sessions to consider whether the certificate and plan satisfy the section, and the Court will not interfere by mandamus.

**R. v. SURREY JJ., Ex parte LOCKE-KING, [1908] 1 K. B. 374; 77 L. J. K. B. 167; 72 J. P. 53; 98 L. T. 42; 24 T. L. R. 185; 6 L. G. R. 98—Div. Ct.**

**VI. MANAGEMENT AND CONTROL OF HIGHWAYS.**

[No paragraphs in this vol. of the Digest.]

**VII. REPAIR AND MAINTENANCE OF HIGHWAYS.**

*See also* TRAMWAYS, Nos. 4, 5.

**(a) Awarded Road.**

[No paragraphs in this vol. of the Digest.]

**(b) Drainage.**

[No paragraphs in this vol. of the Digest.]

**(c) Indictment for Non-repair.**

[No paragraphs in this vol. of the Digest.]

**(d) Mandamus.**

[No paragraphs in this vol. of the Digest.]

**(e) Material for Repair.**

**8. Justices' Licence to take Materials—Jurisdiction—Park—Licence for Fixed Period—Addressed to Surveyor of Council—Power to Amend—Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), s. 7—Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 51, 53, 54.**—Application was made to justices by a rural district council under the Highway Act, 1835, for a licence to take from a quarry materials for road repairs. It was contended on behalf of the owner that the land in which the quarry was situated was a park, and that the justices therefore had no jurisdiction to make the order. The justices

### Repair and Maintenance of Highways—Continued.

were satisfied on the evidence that the land in question was not a park, and they granted a licence to the surveyor of the rural district council to take from the quarry materials for road repairs for a period of five years.

**HELD**—(1) that the justices had no jurisdiction unless the land was in fact not a park, that they could not give themselves jurisdiction by an erroneous finding of fact, and that as on the facts the land in question was a park, the justices had no jurisdiction to make the order; (2) that the justices had no power to make the order for a fixed period and not *pro re nata*; and (3) that the licence should have been granted to the rural district council themselves as surveyors of highways, and not to their servant, but that this error was within the power of amendment conferred by sect. 7 of the Quarter Sessions Act, 1849.

*R. v. BRADFORD*, [1908] 1 K. B. 365; 77 L. J. [K. B. 475; 72 J. P. 61; 98 L. T. 620; 24 T. L. R. 195; 6 L. G. R. 333—Div. Ct.]

**9. Justices' Licence—Jurisdiction—Orchard—Finding of Fact by Justices—Certiorari.**—By an Irish Highway Act justices can by order authorise entry upon land to obtain road materials provided such land is not, *inter alia*, an orchard.

Their decision that land is not an orchard, etc., may be challenged on *certiorari* not only on the ground that there is no evidence to support it, but also on the ground that it is against the weight of evidence.

*R. v. QUEEN'S COUNTY JJ.*, [1908] 2 I. R. 285—[K. B. D.]

**10. Right to get Stone from Waste Lands—Stacking Stones on Surface—Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 51, 55.**—The plaintiff was in occupation, under a lease from the lord of the manor, of certain waste lands. The defendants, the rural district council, were the surveyors of highways for the district in which the lands were situate. The plaintiff, alleging that the defendants had entered upon his lands, had got and taken away stone therefrom to a greater extent than was required for immediate use in the repair of the highways, had stacked stones upon his land for an unreasonable time, and had not made good the damage done to the land in getting and carrying away the stones, brought an action for damages and an injunction or declaration.

**HELD**—that the defendants were acting within their rights under the Highway Act, 1835, and no injunction or declaration ought to be granted. They were entitled to stack the stone upon the waste for a reasonable time, having regard to the exercise of their statutory duties.

*RUSSELL (EARL) v. MIDHURST RURAL DISTRICT COUNCIL*, 72 J. P. 180; 98 L. T. 530; 24 T. L. R. 368; 6 L. G. R. 462—Joyce, J.

### (f) Miscellaneous.

**11. Repair amounting to Improvement—Alteration of Nature of Road—Trespass.**—A surveyor of highways has no right at common law under guise of repairing a public path to improve it into a totally different kind of path and a more commodious path than it used to be.

Accordingly he cannot at common law make cuttings to improve the levels, or build bridges, where none formerly existed, to carry the path across streams.

*Sutcliffe v. Surveyors of Highways of Sowerby* ((1859), 1 L. T. (N.S.) 7) followed.

*R. v. Inhabitants of Helalough* (*Times*, April 18th, 1863) not followed.

Sect. 24 of the Highway Act, 1835, does not justify the erection of a line of stone posts beside the path in order to indicate the path.

Evidence of reputation as to the publicity of a path must be general; hearsay evidence of particular facts which, if properly proved, would go far to establish the public right is inadmissible.

*RADCLIFFE v. MARSDEN URBAN DISTRICT [COUNCIL]*, 72 J. P. 475; 6 L. G. R. 1186—Channell, J.

**12. Subsidence by Working of Coal Mines—Measure of Damages—Raising Road to Original Level—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 149—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), ss. 10, 27.**—A highway vested in a corporation subsided in consequence of the working of a colliery company's coal mines. The corporation raised the highway to its former level, and sought to recover the expenses of so doing from the colliery company, who contended that they were only liable to pay the cost of making the highway as commodious to the public as it was before, without raising it to its former level.

**HELD**—that the corporation were not entitled to raise the road to the old level, cost what it might, and whether it was more commodious to the public or not; and as they had acted under the mistaken belief that they were bound, or at least entitled, to restore it to the old level at the colliery company's expense, and, so thinking, had not considered whether it was necessary to do so in the interests of the public, they were not entitled to recover more than the cost of making the highway as commodious to the public as it was before, without so raising it to its former level.

Decision of the Court of Appeal ([1907] 1 K. B. 78; 76 L. J. K. B. 68; 71 J. P. 73; 95 L. T. 815; 23 T. L. R. 80; 5 L. G. R. 43) reversed.

*LODGE HOLES COLLIERY CO. v. WEDNESBURY [CORPORATION]*, [1908] A. C. 323; 77 L. J. K. B. 847; 72 J. P. 417; 99 L. T. 210; 24 T. L. R. 771; 52 Sol. Jo. 620; 6 L. G. R. 924—H. L.

### (g) Misfeasance.

[No paragraphs in this vol. of the Digest.]

### (h) Mode of Repair.

See No. 11, *supra*.

### (i) Ratione Tenuræ.

[No paragraphs in this vol. of the Digest.]



## VIII. EXTRAORDINARY TRAFFIC.

See also CONTRACT, No. 7.

## (a) Contributory Negligence of Authority.

[No paragraphs in this vol. of the Digest.]

## (b) Liability for Damage.

13. "By or in Consequence of Whose Order"—*Highways and Locomotives (Amendment) Act*, 1878 (41 & 42 Vict. c. 77), s. 23—*Locomotives Act*, 1898 (61 & 62 Vict. c. 29), s. 12.]—By the order of two companies subsidiary to the defendant company, traction engines and trucks drawing ballast and sand passed over a road in respect of which the plaintiffs were the highway authority. The defendant company had settled claims for extraordinary expenses consequent upon extraordinary traffic, in respect of traffic of the same nature carried over other sections of the same road under other highway authorities.

HELD, on the facts—that the subsidiary companies were the agents of the defendant company, and that the traffic was extraordinary, and that the defendants were liable.

KENT COUNTY COUNCIL v. KENT COAL CONCESSIONS, LD., 72 J. P. 507—Jelf, J.

14. *Stone-hauling—Excessive Weight—Traction Engine and Trucks—Highways and Locomotives (Amendment) Act*, 1878 (41 & 42 Vict. c. 77), s. 23.]—A road in a district in which for many years stone had been quarried and hauled was damaged by the haulage thereon by the defendants of stone in trucks drawn by a traction engine. Haulage by traction engines had been carried on over other roads, but this mode of haulage, although it had been adopted for a period by the defendants, was not the accustomed mode over the road in question, haulage having previously been done in carts or waggons drawn by horses.

HELD—that the traffic was extraordinary traffic.

SHEPTON MALLETT RURAL DISTRICT COUNCIL [v. JOHN WAINWRIGHT & Co., 72 J. P. 459; 24 T. L. R. 894; 6 L. G. R. 1121—Lawrance, J.

15. *Timber Haulage—Staple Trade of District—Highways and Locomotives (Amendment) Act*, 1878 (41 & 42 Vict. c. 77), s. 23—*Locomotives Act*, 1898 (61 & 62 Vict. c. 29), s. 12.]—There is nothing in the case of *Raglan Highway Board v. Monmouth Steam Co.*, (1881) 46 J. P. 598, to the effect that if the traffic in question is common to the district, or is the staple trade of the district, it must, as regards any particular road in the district, be held to be ordinary and not extraordinary traffic. The question of whether traffic is extraordinary or not is one of fact; and in such a case as the above the Court must consider at what intervals such traffic is in fact conducted over the particular road, and whether such intervals are sufficiently short and regular to make the traffic ordinary on the particular road.

GEIRIONYDD RURAL DISTRICT COUNCIL v. [GREEN, 72 J. P. 321; 6 L. G. R. 733—Div. Ct.

## (c) Limitation of Action.

16. *Steam Haulage of Road-mending Materials conducted under Contract for One Year—"Particular Building Contract"—"Work Extending over a Long Period"—Highways and Locomotives (Amendment) Act*, 1878 (41 & 42 Vict. c. 77), s. 23—*Locomotives Act*, 1898 (61 & 62 Vict. c. 29), s. 12 (1) (b).]—By sect. 12, sub-sect. 1 (b) of the *Locomotives Act*, 1898, proceedings for the recovery of extraordinary expenses "shall be commenced within twelve months of the time at which the damage has been done, or where the damage is the consequence of any particular building contract, or work extending over a long period, shall be commenced not later than six months after the completion of the contract or work." Contractors agreed with the defendant corporation to deliver stones for the making up of a road for a period of twelve months. The stones were hauled by traction engines, and caused damage to the roads in the district of the plaintiff local authority. In an action to recover the extraordinary expenses caused thereby:

HELD—that "work" meant some particular work to be done, and did not include a contract to deliver materials; and that therefore the plaintiffs could only recover for the damage done during the twelve months before action.

HELD ALSO—that the words "by or in consequence of whose order" in sect. 12, sub-sect. 1 (c) of the Act meant by or in consequence of whose order the traffic had been in fact conducted, whether it was or was not the necessary consequence of the order, and that the defendants were liable.

Decision of Walton, J. ([1907] 2 K. B. 39; 76 L. J. K. B. 599; 71 J. P. 166; 97 L. T. 173; 5 L. G. R. 453) reversed on the first point.

BROMLEY RURAL DISTRICT COUNCIL v. CROYDON CORPORATION, [1908] 1 K. B. 353; 77 L. J. K. B. 335; 72 J. P. 17; 98 L. T. 165; 24 T. L. R. 132; 6 L. G. R. 165—C. A.

17. "The Completion of the Contract or Work"—*Locomotives Act*, 1898 (61 & 62 Vict. c. 29), s. 12 (1).]—By sect. 12 (1) of the *Locomotives Act*, 1898, sect. 23 of the *Highways and Locomotives (Amendment) Act*, 1878 (which relates to the recovery of expenses of extraordinary traffic), is to be amended so that, *inter alia*, "Proceedings for the recovery of any expenses incurred after the passing of this Act shall be commenced within twelve months of the time at which the damage has been done, or where the damage is the consequence of any particular building contract, or work extending over a long period, shall be commenced not later than six months after the completion of the contract or work."

HELD—that the "completion of the contract or work" within the meaning of the section means the completion of the contract or work so far as the work which does the damage is concerned. The action must be brought within six months of the completion of the work from which similar damage to the roads may be anticipated.

Accordingly where under a contract for the



**Extraordinary Traffic—Continued.**

construction and maintenance for six months after completion of a water-tight covered reservoir all the building material occasioning extraordinary traffic or excessive weight had been brought by February, 1906, and the reservoir was built and filled by February, 1906, but was subsequently emptied, as cracks appeared, and was not made watertight till the middle of May, 1906, it was

**HELD**—that the work was completed in February, 1906, or before, and that the decision of a county court Judge that it was not completed till the middle of May, 1906, must be reversed.

**REIGATE RURAL DISTRICT COUNCIL v. SUTTON** [DISTRICT WATER CO., EWART, THIRD PARTY, 72 J. P. 301; 99 L. T. 168; 6 L. G. R. 936; [1908] W. N. 120—Div. Ct.]

**(d) Practice.**

**18. Light Locomotives—Tribunal before which Damage Recoverable—Highways and Locomotives (Amendment) Act, 1878** (41 & 42 Vict. c. 77), s. 23—*Locomotives Act, 1898* (61 & 62 Vict. c. 29), ss. 12 (1), 17 (2).—An action in respect of extraordinary traffic must be brought in the county court or High Court even though the damage complained of has been done by a "light locomotive."

Sect. 17 (2) of the Locomotive Act, 1896, has not the effect of preserving the jurisdiction of justices in extraordinary traffic cases where a "light locomotive" is concerned.

**R. v. BATH COUNTY COURT JUDGE, [1908] 1** [K. B. 958; 77 L. J. K. B. 402; 72 J. P. 67; 98 L. T. 505; 6 L. G. R. 160—Div. Ct.]

**IX. OBSTRUCTION OF HIGHWAYS.**

**19. Dangerous Animal—Obstruction—Contributory Negligence.**—A sow, the property of the defendant, strayed on to the highway without any negligence on his part. The sow caused a horse to shy as it was passing the motor car of the plaintiff, and in the collision that ensued the plaintiff's car was damaged.

The jury found that the probable result of the sow being on the highway was to cause the horse to shy.

The jury could not agree as to whether there was contributory negligence on the part of the driver of the car.

**HELD**—that on the first finding the plaintiff was entitled to succeed in the absence of any contributory negligence, but that judgment could not be entered for the plaintiff as the jury had disagreed on that point, and that consequently there must be a new trial.

*Cox v. Burbridge*, ((1863), 13 C. B. (N. S.) 430) distinguished.

**HIGGINS v. SEARLE**, 72 J. P. 449—Lawrance, J.

**20. Horse and Cart Left by Driver—Boy in Charge—Highway Act, 1835** (5 & 6 Will. 4, c. 50), s. 78.—The mere fact that someone has been left in charge of a horse and cart does not preclude justices from convicting under sect. 78

of the Highway Act, 1835, if in fact an obstruction is caused.

**HINDE v. EVANS**, 70 J. P. 458; 4 L. G. R. 1152; [21 Cox, C. C. 331—Div. Ct.]

**21. Nuisance—Inappreciable Nuisance—Coffee Stall in Street—Finding of Jury.**—The defendant, the secretary of a temperance society, was indicted for a common nuisance by placing and keeping a coffee stall on a public carriage-way and so obstructing the same. The stall was of a permanent character, and was placed in a convenient position by the society four years ago with the approval of the corporation.

The jury returned a special verdict, finding that the coffee stall was an obstruction, but that it did not appreciably interfere with the traffic in the street.

**HELD**—that on this finding the Judge ought not to have entered a verdict of guilty.

**R. v. BARTHOLOMEW, [1908] 1 K. B. 555; 77** [L. J. K. B. 275; 72 J. P. 79; 98 L. T. 284; 24 T. L. R. 238; 6 L. G. R. 262; 52 Sol. Jo. 208; 21 Cox, C. C. 556—C. C. R.]

**X. BRIDGES.****(a) Erection and Repair.**

**22. Bridge over Railway—Width of Bridge and Approaches—Duty to Widen—Special Act—Incorporation of Prior Special Act—Provisions Inconsistent with General Act—Taff Vale Railway Acts, 1835** (6 & 7 Will. 4, c. lxxxii.), s. 69; and 1846 (9 & 10 Vict. c. cccxciii.), ss. 1, 3—*Railways Clauses Act, 1845* (8 & 9 Vict. c. 20), ss. 50, 51.—By sect. 69 of the Taff Vale Railway Act, 1836, where a bridge was erected to carry a public highway over the railway, the road over the bridge was to be of a width between the fences of not less than fifteen feet. By sect. 1 of the Taff Vale Railway Act, 1846, "all the provisions contained in" the Act of 1836 "relating to the Taff Vale Railway . . . except such of them as are inconsistent with the provisions of . . . the Railways Clauses Consolidation Act, 1845, and except also such as by this Act are altered or otherwise provided, shall extend to this Act and to the several purposes thereof as fully and effectually as though such provisions were re-enacted in this Act as applicable to such purposes." By sect. 3, "all the provisions of the . . . Railways Clauses Consolidation Act, 1845, so far as the same are applicable, and save in so far as the same may be inconsistent with the provisions hereinafter mentioned, shall extend to this Act and to the several purposes thereof, and the same together with this Act shall be read together as one Act." By sect. 1 of the Railways Clauses Act, 1845, the Act "shall apply to every railway which shall, by an Act which shall hereafter be passed, be authorised to be constructed, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall . . . form part of such Act and be construed together

**Bridges—Continued.**

therewith as forming one Act." Sects. 50 and 51 of the Act provide that every bridge carrying a public carriage road over a railway should (except as otherwise provided by the special Act) have a specified width, which was greater than the width prescribed in the Taff Vale Railway Act, 1836.

**HELD**—that the provision in the Taff Vale Railway Act, 1836, as to the width of the bridge was incorporated in the Act of 1846, it not being inconsistent with the provisions of sects. 50 and 51 of the Railways Clauses Act, 1845, inasmuch as sect. 50 contained the words "except as otherwise provided by the special Act."

*Semble*, the word "bridge" in sect. 51 of the Railways Clauses Act, 1845, does not include the approaches to the bridge.

Decision of Phillimore, J. ([1907] 1 K. B. 739; 76 L. J. K. B. 486; 71 J. P. 189; 96 L. T. 633; 5 L. G. R. 395) varied.

**RHONDDA URBAN DISTRICT COUNCIL v. TAFF VALE RY.**, [1908] 1 K. B. 239; 77 L. J. K. B. 424; 72 J. P. 25; 98 L. T. 356; 24 T. L. R. 165; 6 L. G. R. 201—C. A.

**23. Bridge Carrying Road over Railway—Not a "Public Highway" — Maintenance of Road and Bridge—Construction of Special Act.**]

—By their special Act a railway company were empowered to carry a road over their line; the Act did not specify that they were to "maintain" the bridge, and as the road was not a "public highway" the maintenance sections of the general statute of 1845 did not apply.

**HELD**—that (except for their own purposes and safety) the railway company need not maintain either the bridge or the roadway over it.

**GLASGOW CORPORATION v. CALEDONIAN RY.**

[Co., [1908] S. C. 244—Ct. of Sess. Affirmed, [1908] W. N. 219; 46 Sc. L. R. (H. L.) 30—H. L.

**24. Bridge over Railway—"Public Highway" — Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 46.]**—The words "public highway" in sect. 39 of the Railways Clauses (Scotland) Act, 1845, which corresponds to sect. 46 of the Railways Clauses Consolidation Act, 1845, apply only to a road which is public *de jure*, and not to every road to which the public may in fact be admitted.

**GLASGOW CORPORATION v. CALEDONIAN RY.**, [1908] S. C. 244—Ct. of Sess.

Affirmed, [1908] W. N. 219—H. L.

**(b) Tolls.**

[No paragraphs in this vol. of the Digest.]

**XI. STATUTORY INTERFERENCE WITH HIGHWAYS.****(a) Railway Companies.**

[No paragraphs in this vol. of the Digest.]

**(b) Tramways.**

[No paragraphs in this vol. of the Digest.]

**(c) Water and Canal Companies.**

[No paragraphs in this vol. of the Digest.]

**XII. PRIVATE STREET WORKS.****(a) Charge on Premises.**

[No paragraphs in this vol. of the Digest.]

**(b) Exemptions from Liability as Owner.**

[No paragraphs in this vol. of the Digest.]

**(c) Local Act.**

[No paragraphs in this vol. of the Digest.]

**(d) Miscellaneous.**

**25. Apportionment of Expenses — Power of Justices as to "Degree of Benefit" — Private Street Works Act, 1892 (55 & 56 Vict. c. 57), ss. 7, 8 (1), 10.]**—In the absence of a resolution by the urban authority under sect. 10 of the Private Street Works Act, 1892, that the apportionment of the expenses of making up a street is to be made otherwise than according to frontage, the justices have no jurisdiction under sect. 8 (1) of the Act on the hearing of objections to the provisional apportionment to reduce the apportionment in respect of the degree of benefit to be derived by any premises, or of the amount and value of any work already done by the owners or occupiers.

**BRIDGWATER CORPORATION v. STONE**, 72 [J. P. 487; 6 L. G. R. 1171—Div. Ct.

**26. Contract between Urban Authority and Frontagers as to Making Up of Roads—Ultra or Intra Vires — Private Street Works Act, 1892 (55 & 56 Vict. c. 57), ss. 7, 8, 14.]**—The owners of and frontagers on certain roads agreed with the urban authority, by deed made in 1879, that from January 1st, 1880, the roads should be dedicated to the public, and should be accepted by the urban authority as public highways, repairable by the inhabitants at large, and should be maintained and repaired accordingly, and that the urban authority should be at liberty to plant trees, and to erect and maintain seats for public use thereon, and to do all other acts, and to exercise all other powers, under a local Act of 1855, and the Public Health Act, 1875. It was, however, in and by the said deed further agreed that the urban authority was to retain and have the same powers of requiring the frontagers, so soon and to such extent only as their lands should be actually occupied for building purposes, to sewer, level, pave, etc., such of the said roads as should for the time being not be sewered, levelled, paved, etc., to the satisfaction of the urban authority, and such powers of executing and of recovering expenses, and of taking proceedings in relation to the matters aforesaid, as the urban authority would for the time being have or be capable of exercising under the Public Health Act, 1875, or the local Act, if the said roads had, for the time being, not been accepted by the urban authority as public highways, and were not highways repairable by the inhabitants at large.

The corporation, who had adopted the Private Street Works Act, 1892, sued a successor in title of one of the frontagers on one of the said roads, under sect. 14 of that Act, for the apportioned expenses of private street works executed on the road.

The frontager had taken no objection to the



**Private Street Works—Continued.**

provisional or to the final apportionment under sects. 7 and 12 of the Act.

**HELD**—that if the meaning of the deed was that the roads were, as between the parties, to be deemed highways repairable by the inhabitants at large, and that—by implication—the corporation undertook not to put into force the Private Street Works Act, 1892, against the frontagers, it was *ultra vires*. If the deed had no such meaning, it was no bar, in the present case, to proceedings under sect. 14 of that Act.

**FOLKESTONE CORPORATION v. ROOK**, 71 J. P. [559; 6 L. G. R. 69—Div. Ct.

**27. "Highway"—Highway Repairable by the Inhabitants at Large—Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 53.**—The word "highway" in sect. 53 of the Towns Improvement Clauses Act, 1847, means a highway, whether repairable by the inhabitants at large or not.

**CRUMP v. CHORLEY CORPORATION**, 72 J. P. [334; 98 L. T. 805; 6 L. G. R. 782—Div. Ct.

**28. Sewering—Satisfaction of Local Authority—Evidence—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150—Beckenham Urban District Council Act, 1903 (3 Edw. 7, c. cccvii.), s. 126.**—The appellant was the owner of premises fronting on a street not repairable by the inhabitants at large. Up to 1881 the soil sewage was drained into cesspools, and the surface water was carried by channels constructed by the owners of the land and ultimately ran into a river. In 1881 the local board, the predecessors of the respondents, made a contract for the construction of soil and surface-water sewers in the road in question, but subsequently decided to omit the surface-water sewer. The soil sewer was constructed in 1881 at the expense of the rates, and the surface water continued to be carried away by the above-mentioned channels. In 1891 the board resolved that notices should be served, under sect. 150 of the Public Health Act, 1875, on the frontagers, requiring them to pave, metal, channel and make good the road, so as to allow of its being taken over, but before the notices were issued they accepted a guarantee from twelve frontagers to put and maintain the road in repair, and resolved to suspend the issue of the notices. In 1904 (under the same section extended by a local Act so as to include the provision of separate surface-water sewers) the respondents resolved that notices be served on the frontagers to provide efficient surface-water drainage, and notices were accordingly served requiring the construction of a surface-water sewer. Owing to non-compliance the respondents constructed the surface-water sewers themselves, and took proceedings under sect. 150 of the Public Health Act, 1875, before the justices to recover the due proportion of the expenses from the appellant. It was objected on behalf of the appellant that the road had been sewered to the satisfaction of the local authority previously to 1904, but the justices found as a fact that the road was a street not sewered to the

satisfaction of the local authority within the meaning of the above section, and they ordered the appellant to pay the amount claimed.

**HELD**—that there was evidence upon which the justices could arrive at that conclusion.

**BLOOR v. BECKENHAM URBAN DISTRICT COUNCIL**, [1908] 2 K. B. 671; 77 L. J. K. B. 864; 72 J. P. 325; 98 L. T. 299; 6 L. G. R. 876—Div. Ct.

**(e) New Streets.**

**29. Local Government—Appeal to Local Government Board—New Streets—Determination of Level—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 268—Portsmouth Corporation Act, 1883 (46 & 47 Vict. c. ccxi.), s. 31.**—By the Portsmouth Corporation Act, 1883, s. 31, any person deeming himself aggrieved by any order, determination, or decision of the corporation under the Act, may appeal to the Quarter Sessions for the borough in the same manner and subject to the same provisions as in the case of an appeal from the decision of a court of summary jurisdiction under sect. 263 of the Public Health Act, 1875, or to the Local Government Board under the provisions of sect. 268 of the same Act.

**HELD**—that the right of appeal to the Local Government Board is limited to the class of cases mentioned in sect. 268 of the Public Health Act, 1875, and does not extend to every order, determination or decision of the corporation under the Portsmouth Corporation Act, 1883, such as, e.g., a refusal to approve new street plans.

Decision of the Court of Appeal, *sub nom. Rex v. Local Government Board, Ex parte Street* (71 J. P. 297; 96 L. T. 651; 5 L. G. R. 844) reversed.

**LOCAL GOVERNMENT BOARD v. STREET**, 72 [J. P. 177; 98 L. T. 599; 52 Sol. Jo. 300; 6 L. G. R. 515—H. L.

**(f) Notices.**

**30. Notice to Frontager—No Reference in Notice in Deposited Plans—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 150, 317, and Sched. IV.**—A notice served by a local authority under sect. 150 of the Public Health Act, 1875, requiring the owner of property adjoining a private street to sewer, level, pave, etc., such street must, to be valid, contain a specific reference to the deposited plans and sections of the structural works intended to be executed.

**STOURBRIDGE URBAN DISTRICT COUNCIL v. [BUTLER AND GROVE]**, 25 T. L. R. 24; [1908] W. N. 210—Neville, J.

**31. Posting on Land—"Conspicuous" Place—Post Upon Boundary—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 267.**—It is a question of fact whether a notice is posted on a "conspicuous part" of a piece of vacant land so as to satisfy s. 267 of the Public Health Act, 1875.

**SO HELD**—where a notice had been fixed to a post just on the boundary between the defendant's land and another plot, and the county court judge held that even if half the post was,



**Private Street Works—Continued.**

strictly speaking, on his land the notice was not on a "conspicuous part" of it.

WEST HAM CORPORATION *v.* THOMAS, 6 L. G. R.  
[1043—Div. Ct.]

**(g) Objections.**

[No paragraphs in this vol. of the Digest.]

**(h) Owners.**

[No paragraphs in this vol. of the Digest.]

**(i) Property in Street.**

[No paragraphs in this vol. of the Digest.]

**(k) "Street."**

**32. Strip added to Street—Addition to Ancient Highway—Improvement Expenses—Liability of Frontagers—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150.]**—By an agreement, dated in 1883, the owners of an estate, through which ran an ancient highway about thirty feet wide, repairable by the inhabitants at large, agreed with the plaintiffs, who were the borough council, that as and when the estate should be laid out for building the owners would straighten and lay out the road so as to make it forty feet wide throughout. The agreement recited that it was entered into for the purpose of settling a question which had arisen as to the extent of the public rights over the road. When the whole of the road had been laid out in accordance with the agreement, the plaintiffs made it up under the powers of sect. 150 of the Public Health Act, 1875, and sought to recover the expenses from the owners of premises abutting on the road.

**HELD**—that the additions to the road, being made as part of a bargain with the council, must be treated as repairable by the inhabitants at large, and that the frontagers were not liable.

*Evans v. Newport Urban Sanitary Authority* ((1889) 24 Q. B. D. 264; 59 L. J. M. C. 8; 54 J. P. 374; 61 L. T. 684; 38 W. R. 400—Div. Ct.) distinguished.

Decision of Joyce, J. (71 J. P. 299; 97 L. T. 43; 23 T. L. R. 449; 5 L. G. R. 536) reversed.

PORTSMOUTH CORPORATION *v.* HALL, 71 J. P.  
[564; 98 L. T. 513; 24 T. L. R. 76; 6 L. G. R. 16—C. A.]

**XIII. MISCELLANEOUS.**

[No paragraphs in this vol. of the Digest.]

**HIRE OF GOODS.**

*See* BAILMENT.

**HIRE-PURCHASE.**

*See* BAILMENT; BANKRUPTCY; BILLS OF SALE.

**HOLIDAYS.**

*See* TIME.

**HOMICIDE.**

*See* CRIMINAL LAW.

**HONG KONG.**

*See* DEPENDENCIES AND COLONIES.

**HORSE RACING.**

*See* GAMING AND WAGERING.

**HORSE SLAUGHTERERS.**

*See* ANIMALS.

**HOSPITALS.**

*See* CHARITIES; PUBLIC HEALTH.

**HOTELS.**

*See* INNS AND INNKEEPERS.

**HOUSE AGENT.**

*See* AGENCY; REVENUE; SALE OF LAND; VALUERS AND APPRAISERS.

**HOUSEBREAKING IMPLEMENTS, POSSESSION OF.**

*See* CRIMINAL LAW AND PROCEDURE.

**HOUSE OF LORDS.**

*See* COURTS; PARLIAMENT.

**HOUSING OF THE WORKING CLASSES.**

*See* COMPULSORY PURCHASE; METROPOLIS; PUBLIC HEALTH.

**HUSBAND AND WIFE.**

	COL.
I. PROMISE TO MARRY . . .	274
II. MARRIAGE.	
(1) Presumption . . . . .	274
[No paragraphs in this vol. of the Digest.]	
(2) Proof . . . . .	274
(3) Validity . . . . .	275
III. PERSONAL RIGHTS AND OBLIGATIONS ARISING FROM MARRIAGE	276
[No paragraphs in this vol. of the Digest.]	
IV. EFFECT OF MARRIAGE WITH REGARD TO PROPERTY.	
(1) Conveyance by Wife . . . . .	276
(2) Dower, etc. . . . .	277
(3) Separate Estate . . . . .	277
V. ANTENUPTIAL OBLIGATIONS OF WIFE . . . . .	279
[No paragraphs in this vol. of the Digest.]	
VI. CONTRACTS OF WIFE.	
(1) As Agent for Husband . . . . .	279
(2) With Husband . . . . .	280
VII. TORTS OF WIFE DURING COVERTURE . . . . .	280
VIII. GIFTS BETWEEN HUSBAND AND WIFE . . . . .	280
[No paragraphs in this vol. of the Digest.]	
IX. PROCEEDINGS.	
(1) Against Husband and Wife . . . . .	280
[No paragraphs in this vol. of the Digest.]	
(2) Between Husband and Wife . . . . .	280
(3) Wife's Liability for costs . . . . .	280
[No paragraphs in this vol. of the Digest.]	
X. SEPARATION DEEDS . . . . .	280
XI. MATRIMONIAL CAUSES IN THE HIGH COURT.	
(1) Alimony and Maintenance . . . . .	281
(2) Costs . . . . .	281
(3) Cruelty . . . . .	281
(4) Custody of Children . . . . .	283
(5) Damages . . . . .	283
(6) Desertion . . . . .	283
(7) Discretion of Court . . . . .	284
(8) Foreign Divorce . . . . .	284
(9) Judicial Separation . . . . .	285
(10) Jurisdiction . . . . .	285
(11) Nullity of Marriage . . . . .	286
(12) Practice . . . . .	287
(a) <i>Appeals and New Trials</i> . . . . .	287
[No paragraphs in this vol. of the Digest.]	
(b) <i>Arrangement of Lists</i> . . . . .	287
[No paragraphs in this vol. of the Digest.]	
(c) <i>Contents of Petition</i> . . . . .	287
[No paragraphs in this vol. of the Digest.]	
(d) <i>Delay</i> . . . . .	287
(e) <i>Divorce Bill</i> . . . . .	287
(f) <i>Evidence</i> . . . . .	288

XI. MATRIMONIAL CAUSES IN THE HIGH COURT—*Continued.*

(12) Practice— <i>Continued.</i>	COL.
(g) <i>Hearing</i> . . . . .	288
(h) <i>Interlocutory Proceedings</i> . . . . .	288
[No paragraphs in this vol. of the Digest.]	
(i) <i>Intervention of Third Party</i> . . . . .	288
[No paragraphs in this vol. of the Digest.]	
(j) <i>Notice, Service and Stay of Proceedings</i> . . . . .	288
[No paragraphs in this vol. of the Digest.]	
(k) <i>Miscellaneous</i> . . . . .	289
XII. PROTECTION ORDER . . . . .	289
[No paragraphs in this vol. of the Digest.]	
XIII. RESTITUTION OF CONJUGAL RIGHTS . . . . .	289
XIV. VARIATION OF SETTLEMENTS . . . . .	291
XV. SUMMARY PROCEEDINGS IN MATRIMONIAL CAUSES.	
(a) Cruelty and Drunkenness . . . . .	293
[No paragraphs in this vol. of the Digest.]	
(b) Desertion . . . . .	293
(c) Evidence . . . . .	293
[No paragraphs in this vol. of the Digest.]	
(d) Jurisdiction . . . . .	293
[No paragraphs in this vol. of the Digest.]	
(e) Maintenance . . . . .	293
[No paragraphs in this vol. of the Digest.]	
(f) Practice: Appeals, Notes of Proceedings, Costs . . . . .	293

*And see* BANKRUPTCY, Nos. 32; 34, 35, *BASTARDY*; *CONFLICT OF LAWS*, No. 1; *CONTRACTS*, No. 20; *CRIMINAL LAW*; *DOWER*; *EQUITY*, Nos. 1, 2; *EXECUTORS*; *INSURANCE*, No. 9; *POOR LAW*; *PRACTICE AND PROCEDURE*; *WILLS*.

**I. PROMISE TO MARRY.**

*See* CONTRACT, Nos. 1 (a), 16.

**II. MARRIAGE.****(1) Presumption.**

[No paragraphs in this vol. of the Digest.]

**(2) Proof.**

**1. Evidence — Marriage Certificate — Form of.**—A marriage certificate purporting to be an extract from the marriage register of B., and purporting to be signed by the vicar of B., is evidence admissible under 14 & 15 Vict. c. 99, s. 14, although it does not state that the register is in the custody of the vicar of B.

*R. v. HAMILTON*, *Times*, May 11th, 1908—  
[C. C. R.]

**2. Marriage in Jersey—Proof of.**—A Jersey marriage may be proved as an English one.

*EDEN v. EDEN*, 24 T. L. R. 602; 52 Sol. Jo. 483—  
[Bucknill, J.]

**Marriage—Continued.**

3. *Marriage in the Isle of Man—Practice.*—Where a marriage had taken place by an English Bishop's special licence in the Isle of Man, the Court, without requiring expert evidence, expressed itself satisfied as to the validity of the marriage on production of the licence and the evidence of the petitioner.

ROHMANN v. ROHMANN, 25 T. L. R. 78 ; 53 Sol. [Jo. 64—Barnes, Pres.

**(3) Validity.**

4. *Marriage before Registrar—Mis-statement of Surname Marriage and Registration Acts Amendment Act, 1856* (19 & 20 Vict. c. 119), s. 2.—Where a marriage ceremony is performed under the Registration Acts, the fact that the surname of one of the parties and her condition were untruly stated does not render the marriage invalid, or prevent it causing a forfeiture under a will.

Lane v. Goodwin ((1843), 4 Q. B. 361) followed.

IN RE RUTTER, DONALDSON v. RUTTER, [1907] 2 Ch. 592 ; 77 L. J. Ch. 34 ; 97 L. T. 883 ; 24 T. L. R. 12—Eady, J.

5. *Marriage in England between Englishwoman and Hindu Domiciled in India—Personal Incapacity by Hindu Law.*—A foreigner domiciled abroad who comes to this country and marries here in due form according to English law a domiciled Englishwoman, cannot afterwards be heard to say that by the law of his domicile a disability of a personal character prevented him from legally entering into such marriage.

A British subject from British India, a Hindu, went through the ceremony of marriage in England with a domiciled Englishwoman intending it to be a binding ceremony of marriage. Subsequently, to a petition by the wife for a judicial separation on account of his desertion, the husband alleged that according to Hindu law and religion—the law of his domicile and his personal law—he could not marry outside his own caste or with one who was not a Hindu by religion.

HELD—that the husband could not be allowed to set up against the marriage, which was contracted here according to English law, a personal disqualification imposed by the law of his domicile.

VENUGOPAL CHETTI v. VENUGOPAL CHETTI, [25 T. L. R. 146—Barnes, Pres.

6. *Marriage in Japan—Extra-Territoriality—Dissolution—Nullity.*—Before July 16th, 1899, the fiction of extra-territoriality applied to marriages in Japan, enabling British subjects to be married according to the rites of their own religion, and such marriages were recognised by the Japanese Courts. On July 16th, 1899, this fiction was abolished by a treaty contracted between Great Britain and Japan in 1894, and it then became necessary to register such marriages.

A ceremony of marriage was performed in

Tokio in October, 1899, and was not registered. It would have been valid if performed before the treaty came into operation, but in the absence of registration was invalid. Consequently a petition for dissolution of the marriage failed. Leave was given, however, to amend the petition to one for nullity. The latter must succeed on the ground that no legal marriage had taken place.

MARSHALL v. MARSHALL (OTHERWISE COR- [FIELD], Times, March 10th, 1908—Deane, J.

7. *Marriage with Deceased Wife's Sister—Deceased Wife's Sister's Marriage Act, 1907* (7 Edw. 7, c. 47), ss. 1, 4.—A member of the Church of England, who has married his deceased wife's sister, is not an "open and notorious evil liver" within the meaning of the rubric prefixed to the service of the Holy Communion in the Book of Common Prayer, so as to justify his repulsion from the Holy Communion.

The first proviso in sect. 4 of the Deceased Wife's Sister's Marriage Act, 1907, refers to the duties of a clergyman incident to the actual marriage.

BANISTER v. THOMPSON, [1908] P. 362 ; 24 [T. L. R. 841—Dean of Arches.

8. *Putative Marriage—Divorce in Foreign Country—Scottish Domicil—Validity of "Putative Marriage"—Legitimacy of Issue—Bonâ Fide Belief of Legality of Marriage—Ignorance of Material Fact—Error as to Law of Scotland.*—A husband obtained a divorce from his wife in North Dakota, which was not recognised as valid by the law of British Columbia or of Scotland, in one of which two places the parties were domiciled. The wife subsequently, during the lifetime of the husband, married another man, and a child was born to them. A question was raised as to the legitimacy of the child for the purposes of succeeding to land in Scotland :—

HELD—that the divorce being invalid, the subsequent marriage of the child's parents was also invalid, and that, if the parents *bonâ fide* believed that the divorce was valid according to the law of the place of their domicile, this was an error of law and not of fact, and the law of Scotland would not recognise the subsequent marriage as putative so as to render the issue thereof legitimate.

Quære, whether Scotch law recognises the doctrine of "putative marriage."

IN RE STIRLING, STIRLING v. STIRLING, [1908] 2 Ch. 344 ; 77 L. J. Ch. 717 ; 99 L. T. 9 ; 24 T. L. R. 721—Eady, J.

**III. PERSONAL RIGHTS AND OBLIGATIONS ARISING FROM MARRIAGE.**

[No paragraphs in this vol. of the Digest.]

**IV. EFFECT OF MARRIAGE WITH REGARD TO PROPERTY.****(1) Conveyance by Wife.**

9. *Wife's Conveyance of Real Property—Married Woman Entitled to Real Property Before 1883—Separate Examination—Custom*



**Effect of Marriage with regard to Property—**  
*Continued.*

*of Borough—Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 77, 80.*—A woman, who was married in 1877, was then entitled under her father's will to a life interest in certain lands of burgage tenure in the borough of Kendal. Her life estate in the lands was not settled on her marriage. After her marriage she, with her husband's concurrence, conveyed her life interest in the lands by way of mortgage, but she was not separately examined. The wife subsequently brought an action to set aside the mortgage on the ground that the deed was void as she was not separately examined as required by sect. 80 of the Fines and Recoveries Act, 1833. The mortgagee set up a custom of burgage tenure in Kendal for a married woman to dispose of her real estate by deed with her husband's concurrence, but without a separate examination and acknowledgment.

HELD—that the custom was bad in law and that the mortgage was void.

JOHNSON *v.* CLARK, [1908] 1 Ch. 303; 77 L. J. [Ch. 127; 98 L. T. 129; 24 T. L. R. 156—Parker, J.

(2) **Dower, etc.**

See title DOWER.

(3) **Separate Estate.**

**10. Allowance for Maintenance—Savings by Wife—Husband Temporarily Absent—Right of Husband to Savings—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75).**—A husband, who was living with his wife in England, went to South Africa in search of employment, and having obtained work he remained away for over three years. During that time he remitted to his wife each fortnight a sum of money, part of which she spent upon the maintenance of herself and children and part she saved and deposited in the Post Office Savings Bank in her own name. No condition was attached by the husband when he made the remittances. The husband on his return from South Africa lived with his wife, but subsequently they separated. The husband having claimed the amount of the savings in the Post Office Savings Bank:—

HELD—that the money belonged to the husband.

BIRKETT *v.* BIRKETT, 98 L. T. 540; 24 T. L. R. [284; 52 Sol. Jo. 241—Div. Ct.

**11. Annuity—Restraint on Anticipation—Arrears—Direction in Her Will to Pay Debts—Assets—Damages for Breach of Covenant—Covenant not to Sue—Acquiescence in Non-Payment of Annuity.**—If a married woman by her will directs her debts to be paid, arrears due to her in respect of an annuity, subject to a restraint on anticipation, will be assets liable for her separate debts and also for damages recovered against her executors for a breach of a contract entered into by her.

By a separation deed a husband agreed to pay £1,000 to a trustee upon trust to pay the income to his wife for her separate use without power of

anticipation, and also agreed to pay the trustee a further annual sum to make her income up to £100. He subsequently filed a divorce petition, but the proceedings were compromised by a deed whereby the wife and the trustee purported to release the husband from his covenant to pay the further annual sum, and she covenanted with the husband that neither she nor any person on her behalf should take proceedings to compel the husband to allow her any support, maintenance, alimony, or additional income other than the income of the £1,000. For ten years she accepted £40 per year, and then died.

By her will she directed all her debts to be paid, and her executor now sued the husband for arrears of the annuity. The husband counter-claimed for damages for breach of the wife's covenant not to sue.

HELD—that, the release of the husband's covenant not having been sanctioned by the Court, and being therefore void, her executor was entitled to succeed in the action.

BUT HELD ALSO—that the wife's covenant not to sue was not personal to herself or confined to her lifetime; that it bound all her free separate estate; that the direction in her will for payment of debts made the arrears of the annuity assets for payment of damages for breach of her covenant; and that therefore the husband was entitled to recover back on the counter-claim all the money and costs which he might be ordered to pay in the action.

SPRANGE *v.* LEE, [1908] 1 Ch. 424; 77 L. J. Ch. [275; 98 L. T. 400—Neville, J.

**12. Bankruptcy—Married Woman—Separate Property—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 5—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 152.**—In order to bring a married woman within the jurisdiction of the Bankruptcy Court, the only condition precedent required is proof that she is trading separately from her husband; it is not necessary to prove that she is possessed of separate property.

*Re Helsby, Ex parte Helsby* ((1893), 1 Manson, 12) overruled on the point.

A business may be carried on by a wife separately from her husband, although it is carried on under his management.

IN RE SIMON, 25 T. L. R. 140; 53 Sol. Jo. 117; [1908] W. N. 253.—C. A.

**13. Chattels Real of Wife Married Prior to 1883—Purchase by Husband of Reversion in Fee—Merger.**—The mere purchase by a husband of the reversion in fee of chattels real, the property of his wife whom he married before 1883, does not *per se* operate as a merger of the terms.

HURLEY *v.* HURLEY, [1908] 1 I. R. 393—[Barton, J.

**14. Exercise of General Power of Appointment—Separate Estate—"Debts or Other Liabilities"—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1 (3) (4); s. 4.**—Property appointed by a married woman by her will, before 1893, under a general power of appointment is not thereby made liable on her death for her "debts and other liabilities" if at the time

### Effect of Marriage with regard to Property— *Continued.*

when she contracted them she had no separate estate.

*In re Ann, Wilson v. Ann* ([1894] 1 Ch. 549; 63 L. J. Ch. 334; 70 L. T. 273—Kekewich, J.) overruled.

*RE FIELDWICK, JOHNSON v. ADAMSON*, 53 Sol. [Jo. 47; [1908] W. N. 212—C. A.

**15. Joint Fund in Husband's Name—Purchases for Joint Establishment—Desertion of Wife by Husband—Claim by Husband to Delivery of Articles Bought out of Joint Fund.**—Since the Married Women's Property Act, 1882, a gift of chattels can be made to a husband and wife jointly as effectively as it can to two persons between whom the marriage relationship does not exist. A husband and wife can make a valid contract with respect to the ownership or enjoyment of chattels in their joint possession as effectively as two persons can between whom the marriage relationship does not exist, and such a contract and its terms may be inferred from the terms and manner on and in which the parties have dealt and acted.

If a husband and wife each have some cash and income, and they mutually arrange that her money and his shall form a joint fund kept in an account in the husband's name for the purpose of their joint establishment, and the Court can infer that things have been purchased by the two and paid for out of the joint fund, such things are not exclusively the husband's in the sense that on deserting his wife he can bring an action to recover possession of them and claim to be entitled to deprive her of any right to them. *HUNT v. HUNT*, 25 T. L. R. 132—Muir Mac-kenzie, Official Referee.

### V. ANTE-NUPTIAL OBLIGATIONS OF WIFE.

[No paragraphs in this vol. of the Digest.]

### VI. CONTRACTS OF WIFE.

#### (1) As Agent for Husband.

**16. Authority to Pledge Husband's Credit—Household Expenses—Allowance to Wife.**—The defendant, who was a cabdriver, allowed his wife, with whom he was living, £1 a week for household necessities, being a sufficient sum for the maintenance of the household. The wife ordered meat from a butcher for the use of the household, for which, however, she did not pay. There was no express prohibition by the defendant to his wife forbidding her to pledge his credit. The meat supplied was a household "necessary." In an action by the butcher against the defendant to recover the price thereof:—

**HELD**—that the making of the allowance to the wife for household expenses was sufficient to rebut the presumption that the wife had authority to pledge her husband's credit for household necessities, and that the plaintiff was not entitled to recover.

*SLATER v. PARKER*, 24 T. L. R. 621; 52 Sol. Jo. [498—Div. Ct.

### (2) With Husband.

[No paragraphs in this vol. of the Digest.]

### VII. TORTS OF WIFE DURING COVERTURE.

**17. Wife's Tort—Subsequent Judicial Separation—Husband's Liability—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 26.**—Sect. 26 of the Matrimonial Causes Act, 1857, does not release a husband from liability for torts committed by his wife before the decree of judicial separation has been pronounced. The defendants, who were husband and wife, were married in 1906. The wife opened an account with the plaintiffs, who were bankers, and asked them to buy certain securities for her and cash her cheques. She induced them to do this by presenting a cheque on a bank in America which they cashed, but which when presented to the bank in America was dishonoured. The husband was not a party to this being done nor did the wife act as his agent. The plaintiffs commenced an action against both defendants for the balance due on the wife's account with them, and, after the writ had been issued, the wife obtained a decree of judicial separation.

**HELD**—that what had been done by the wife in connection with the account with the plaintiffs was a tort and that the husband was liable in respect thereof.

*Earle v. Kingscote*, ([1900] 2 Ch. 585; 69 L. J. Ch. 725; 83 L. T. 377; 49 W. R. 3; 16 T. L. R. 511—C. A.) distinguished.

*WILLIAM CUENOD & Co. v. LESLIE AND [WIFE]*, 25 T. L. R. 2; 53 Sol. Jo. 14—Ridley, J.

### VIII. GIFTS BETWEEN HUSBAND AND WIFE.

[No paragraphs in this vol. of the Digest.]

### IX. PROCEEDINGS.

#### (1) Against Husband and Wife.

[No paragraphs in this vol. of the Digest.]

#### (2) Between Husband and Wife.

**18. Action for Protection and Security of Separate Property—Wife in Service—Action against Husband for Malicious Prosecution—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 12.**—An action for malicious prosecution brought by a wife, who was, at the time of the prosecution, in domestic service, against her husband is not an action "for the protection and security of her separate property" within the meaning of sect. 12 of the Married Women's Property Act, 1882, and is therefore not maintainable.

*TINKLEY v. TINKLEY*, 24 T. L. R. 691—Sutton, J.

#### (3) Wife's Liability for Costs.

[No paragraphs in this vol. of the Digest.]

### X. SEPARATION DEEDS.

*See also* Nos. 24, 24a, 52, *infra*.

**19. Covenant not to Sue for Greater Allowance—Subsequent Adultery—Dissolution of Marriage**



**Separation Deeds—Continued.**

*and Decree for Judicial Separation—Power of Court.*—By a deed of separation it was provided that the wife should accept certain chattels and a sum of £100, and there was a covenant that she would not thereafter institute any proceedings to enforce any claim for any further alimony or support or maintenance. The husband subsequently committed adultery, and she obtained a divorce decree.

**HELD**—that his subsequent adultery did not deprive him of the right to have the restraining provisions of the deed enforced.

ROSS *v.* ROSS, [1908] 2 I. R. 339—Andrews, J.

**XI. MATRIMONIAL CAUSES IN THE HIGH COURT.****(1) Alimony and Maintenance.**

*See* Nos. 40, 46, 49, 50, *infra*.

**(2) Costs.**

**20. King's Proctor Condemned in Costs of Unsuccessful Intervention—Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 2.**—Upon an unsuccessful intervention the King's Proctor may be ordered to pay the petitioner's costs.

As a general rule a successful petitioner ought to be awarded costs; and, although each case should be considered on its merits, the mere fact that the intervention was reasonable is no ground for not awarding them.

WESTCOTT *v.* WESTCOTT, [1908] P. 250; 77 [L. J. P. 102; 99 L. T. 310; 24 T. L. R. 425—Barnes, Pres.

**20a. Order for Payment of Costs of Divorce Suit—Enforcing—No Action lies for in King's Bench Division.**—An order for costs in divorce proceedings will not support an action in the King's Bench Division, but must be enforced according to the divorce rules and regulations.

IVIMEY *v.* IVIMEY, [1908] 2 K. B. 260; 77 [L. J. K. B. 714; 99 L. T. 75; 52 Sol. Jo. 482—C. A.

**21. Wife's Costs—Petition by Wife—Reasonableness of Allegations against Husband.**—If costs have reasonably been incurred on behalf of a wife in presenting a case of a reasonable character, where the charges she brings against her husband have substance in them, so that she is justified in going to a solicitor and obtaining security for herself and indirectly for her solicitor, the wife is entitled to an order for payment by her husband of her costs, though she has failed to establish her case at the trial.

Where a wife makes charges as petitioner against her husband, the case has to be more carefully scrutinised than where the wife merely makes allegations by way of defence to a petition presented against her.

HUNTLY GORDON *v.* HUNTLY GORDON, 24 [T. L. R. 806—Barnes, Pres.

*See also* Nos. 37, 38, 40, 46, 47, 48, *infra*.

**(3) Cruelty.**

**22. Acts of Insanity—Wife Requiring Protection from Husband.**—Where a husband had

twice attempted to commit suicide, and was in consequence confined in an asylum for a few months, and on other occasions made threats against his wife, so that her health became impaired, the Court came to the conclusion upon the facts that the wife required protection against violence on the part of her husband, and granted her a judicial separation. Observations as to cases where insanity is either permanent or recurrent, but such as not to endanger the wife's safety.

BARON *v.* BARON, 24 T. L. R. 273; 52 Sol. Jo. [282—Barnes, Pres.

**23. Evidence—Separation Order on Ground of Cruelty—Conviction Admitted as Corroborative Evidence on Wife's Petition—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), ss. 4, 5.**—A husband was convicted before a stipendiary magistrate of persistent cruelty to his wife, and a separation and maintenance order was made against him under sect. 5 of the Summary Jurisdiction (Married Women) Act, 1895. The wife subsequently petitioned for a divorce upon the ground of her husband's adultery and cruelty. As corroboration of the wife's evidence as to the cruelty she tendered the depositions of the witnesses who gave evidence before the magistrate, and who had left the country and could not be found, and alternatively tendered the conviction itself.

The Court refused to admit the depositions of the witnesses, but admitted the conviction as corroborative evidence, being satisfied in the particular case that the husband had been guilty of cruelty, and that the witnesses called before the magistrate had properly satisfied that court that the charge of cruelty within the Act of 1895 had been established.

JUDD *v.* JUDD, [1907] P. 241; 76 L. J. P. 118; [98 L. T. 59; 23 L. T. R. 538—Deane, J.

**24. Revival—Cruelty by Husband—Wife's Suit for Separation—Discontinued on Terms—Covenant in Deed not to Revive Suit—Subsequent Adultery—Revival.**—In a suit by a wife for judicial separation on the ground of cruelty, an agreement was arrived at and a separation deed was executed which provided that all further proceedings in the suit should be stayed, and the wife agreed in no wise to attempt to revive the same in any manner whatever. The suit accordingly was stayed and the parties lived separate. Subsequently the husband committed adultery, and the wife filed a petition for dissolution of marriage.

**HELD**—that, notwithstanding the deed, the wife was entitled to a decree, the cruelty being revived by the adultery.

Rose *v.* Rose ((1882, 3), 7 P. D. 225; 8 P. D. 98; 51 L. J. P. 79; 47 L. T. 49; 30 W. R. 736) distinguished.

NORMAN *v.* NORMAN [1908] P. 6; 77 L. J. P. [8; 98 L. T. 61; 24 T. L. R. 37—Deane, J.

**24a. Revival—Wife's Suit—Cruelty and Adultery—Cruelty Prior to Separation Deed—Adultery Subsequent—Husband's Virtual**



### Matrimonial Causes in the High Court—Continued.

*Repudiation of Deed—Revival of Cruelty.*—A wife petitioned for a divorce on the ground of her husband's present adultery, and his cruelty some years ago. The suit was undefended, but it was admitted that the cruelty had originally been condoned by a separation deed containing a covenant not to sue in respect of any previous matrimonial offence. The Court came to the conclusion that the husband, by making no payments under the deed, and leaving the country, had in effect repudiated the deed, and

HELD—that the wife was, notwithstanding the deed, entitled to a divorce.

BALCOMBE *v.* BALCOMBE, [1908] P. 176; 77 [L. J. P. 81; 99 L. T. 308—Barnes, Pres.

### (4) Custody of Children.

25. *Custody and Access—Access to Child by Divorced Wife.*—Having regard to the circumstances of the case the Court refused to order the father of a boy seven years of age to allow the mother (who had been divorced by the father) access to the boy on the ground that it might be prejudicial to him.

C. D. *v.* A. B., [1908] S. C. 737—Ct. of Sess.

### (5) Damages.

26. *Decree Nisi and Damages Against Co-Respondent—Suicide—Receiver of His Estate—Refusal to Appoint.*—After a decree nisi, the co-respondent, who had been mulcted in £1,500 damages, committed suicide. The damages had not been paid, but there was evidence that he had been taking steps to raise money for the purpose of paying them. The Court was asked, in the absence of an undertaking by the personal representatives or executors of the deceased, to appoint a receiver of his estate. The Court refused to do so on the ground that there was no danger to the property and that there were no special grounds for making the order.

*Quære*, whether the Court had power to appoint a receiver, as the decree had not yet been made absolute.

BRYDGES *v.* BRYDGES AND WOOD, *Times*, March [31st, 1908—Bucknill, J.

### (6) Desertion.

27. *Summary Separation Order—Effect of, as Preventing Continuance of Desertion—Order Obtained within Two Years of Desertion a Bar to Divorce on Ground of Adultery and Desertion—Desirability of Not Making a Separation Order in Cases of Desertion Only—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 4.*—A separation order granted under the Summary Jurisdiction (Married Women) Act, 1895, has the effect of preventing the continuance of desertion commenced prior to the granting of the order.

Therefore, a deserted wife who obtains such an order within two years of the first desertion

cannot subsequently obtain a divorce on the grounds of desertion and adultery.

In future, unless otherwise desired, orders granted under the Act should be confined to maintenance, and then desertion, commenced prior to the granting of the order, will be continuing desertion.

*Dodd v. Dodd* ([1906] P. 189; 75 L. J. P. 49; 70 J. P. 163; 54 W. R. 541; 94 L. T. 709; 22 T. L. R. 484—Barnes, Pres.) followed.

*Failes v. Failes* ([1906] P. 326; 75 L. J. P. 95; 95 L. T. 547; 22 T. L. R. 687—Bucknill, J.) dissented from.

WILSON *v.* WILSON, 72 J. P. 112; 99 L. T. [307; 24 T. L. R. 256; 52 Sol. Jo. 283—Barnes, Pres.

28. *Summary Separation Order by Justices—Effect of—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 16—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), ss. 4, 5.*—A husband deserted his wife, and about six months afterwards she obtained an order under the Summary Jurisdiction (Married Women) Act, 1895, for separation and payment to her of a weekly sum, upon the ground of his desertion. The husband having subsequently committed adultery, the wife, more than two years after he had deserted her, filed a petition for divorce.

HELD—following, with reluctance, *Dodd v. Dodd* ([1906] P. 189; 75 L. J. P. 49; 70 J. P. 163; 54 W. R. 541; 94 L. T. 709; 22 T. L. R. 484—Barnes, Pres.) that the husband had not been guilty of desertion for two years, and that the wife was therefore not entitled to a divorce.

HARRIMAN *v.* HARRIMAN, 24 T. L. R. 586—[Bucknill, J.

### (7) Discretion of Court.

29. *Connivance—No Step Taken by Petitioner for Twelve Years.*—The petitioner sought dissolution of his marriage on the ground of the respondent's adultery with the co-respondent in whose service the respondent was, and who was also the employer of the petitioner. The respondent and co-respondent had lived together for twelve years.

The Court refused to exercise its discretion in the petitioner's favour and dismissed the petition, on the ground that the petitioner's conduct in having made no attempt for twelve years either to get her back or to divorce her amounted to connivance.

KERRELL *v.* KERRELL AND TERRY, *Times*, April [30th, 1908—Bucknill, J.

### (8) Foreign Divorce.

30. *Frenchman and Englishwoman—Irregularity by French Law—French Decree of Nullity—Subsequent Marriage with Englishman—Lex Domicilii—Lex Loci Contractus.*—The *lex loci contractus* must govern questions arising out of prohibitions against marriage. The respondent was a domiciled Englishwoman, and had married in England a domiciled Frenchman temporarily residing in England. That marriage was

### Matrimonial Causes in the High Court—*Continued.*

pronounced void by the French Court on the ground that the Frenchman was not of full age according to French law, and had not obtained the necessary permission of his parents to marry. The Frenchman then married another person, and the respondent sought a divorce on the ground of desertion and adultery. Her petition was dismissed on the ground of want of jurisdiction. She then married O., who now asked for a decree of nullity on the ground that the marriage was bigamous.

**HELD**—that, as the marriage with the Frenchman was valid according to English law, though not according to French law, the petitioner was entitled to a decree.

*Simonin v. Mallac* ((1860), 2 Sw. & T. 67) and *Sottomayor v. De Barros* ((1879), 5 P. D. 94; 49 L. J. P. 1) followed.

But, *semble*, the respondent's original petition for divorce might properly have been entertained by the English Court.

Decision of Deane, J. ([1907] P. 107; 76 L. J. P. 9; 96 L. T. 505; 23 T. L. R. 158) affirmed.

*OGDEN v. OGDEN* (or PHILIP) [1908] P. 46; [77 L. J. P. 34; 97 L. T. 827; 24 T. L. R. 94—C. A.]

#### (9) Judicial Separation.

*See* Nos. 22, *supra*, and 49, *infra*.

#### (10) Jurisdiction.

**31. Alleged Adultery in England with Foreigner—Foreigner Entering Unconditional Appearance—Application to be Dismissed from Suit—Costs.**—A husband's petition alleged adultery in England with a foreigner. The latter entered an unconditional appearance after being served with the citation in France. He then moved to be dismissed from the suit upon an affidavit that he was a Frenchman domiciled in France.

The Court dismissed him from the suit, but refused him costs on the ground that he had entered an unconditional appearance.

*LEVY v. LEVY AND ANOTHER*, [1908] P. 256; 77 [L. J. P. 95; 99 L. T. 312; 24 T. L. R. 466; 52 Sol. Jo. 379—Bucknill, J.]

**32. Alleged Adultery Abroad with Foreigner—Foreigner Entering Unconditional Appearance—Application to be Dismissed from Suit—Jurisdiction.**—Where a husband seeks a divorce on the ground of his wife's adultery with a person domiciled in Ireland or elsewhere out of the jurisdiction, the proper course is to move for leave to proceed without citing him as co-respondent.

Where a co-respondent, domiciled in a foreign country, had been dismissed from a suit on his own motion, the Court declined to give the husband his costs, although the co-respondent had entered an unconditional appearance to the citation.

*BAKER v. BAKER AND ANOTHER*, [1908] P. 257; [77 L. J. P. 96; 99 L. T. 313; 24 T. L. R. 493; 52 Sol. Jo. 413—Bucknill, J.]

**33. Foreign Co-respondent out of Jurisdiction—Entitled to Notice of Proceedings—No Necessity to Actually Cite.**—A person charged with adultery in a petition is entitled to notice of the proceedings so that, if he wishes, he may clear his character. Therefore if a co-respondent is domiciled and resident out of the jurisdiction, notice of the proceedings must be given to him, though the Court may not require him to be actually served with the petition.

*BOGER v. BOGER*, [1908] P. 300; 77 L. J. P. [151; 52 Sol. Jo. 552—Deane, J.]

#### (11) Nullity of Marriage.

**34. Form of Marriage—Ignorance that it was Marriage Ceremony.**—The Court pronounced a decree of nullity of marriage in a case where the marriage ceremony was gone through in a register office, the petitioner not knowing that she was going through a ceremony of marriage, but thinking that they were merely putting their names down to be married in the future, and the marriage never having been consummated.

*HALL (OTHERWISE BARRAR) v. HALL*, 24 T. L. R. 756—Barnes, Pres.

**35. Frigidity of Wife—Inference of Incompetence.**—Where a wife always refused her husband's request to consummate the marriage and frigidly repelled his advances, though there was no actual attempt by him to consummate the marriage, and the wife refused to submit to a medical examination, the Court drew the inference of incompetence on her part.

*S. v. S. (OTHERWISE M.)*, 24 T. L. R. 253—[Barnes, Pres.]

**36. Impotence of Husband—Self-abuse—Curability.**—A husband on account of habits of self-abuse, was unable to consummate the marriage. The medical evidence was to the effect that if he discontinued his practices for a year he would probably be able to consummate the marriage, but he refused to do so, and shortly after the marriage he left his wife. In a suit by the wife the Court pronounced a decree of nullity.

*J. (OTHERWISE K.) v. J.*, 24 T. L. R. 622—[Deane, J.]

**37. Insanity—Paranoia—Rules Guiding the Court—Decree—Custody of Child—Costs of Official Solicitor as Respondent's Guardian ad litem.**—A wife petitioned for nullity of marriage on the ground of her husband's insanity. The Court granted a decree, and gave her the custody of the child. The official solicitor having acted as the husband's guardian *ad litem*, the wife was ordered to pay his costs and add them to her own costs of suit.

Upon such a petition the Court has to determine not whether the respondent was aware that he was going through a form of marriage, but whether he was capable of understanding the nature of the contract entered into by him free from the influence of morbid delusions on the subject. The Court must look into the history of his disease to see whether it can be inferred to have existed at the time of the marriage.

**Matrimonial Causes in the High Court—Continued.**

*Hunter v. Edney (or Hunter)* (1881) 10 P. D. 93 followed.

*JACKSON v. JACKSON*, [1908] P. 308; 77 L. J. P. [147; 24 T. L. R. 674; 52 Sol. Jo. 535—Deane, J.

**38. Marriage with Divorced Husband's Brother—Respondent's Costs.**—The petitioner in 1890 went through a form of marriage with the respondent, who had previously been married to the petitioner's brother, whom she had divorced. The parties lived together for some years, and a child was born of the union, whom the petitioner was educating. In 1892 a deed was entered into by which the respondent was provided for.

**HELD**—that a decree of nullity should be granted, that the case was not one in which any conditions as to securing an allowance for the respondent and the child should be attached to the decree, and that the respondent was not entitled to costs.

*D'ETCHEGOYEN v. D'ETCHEGOYEN*, 25 T. L. R. [85—Barnes, Pres.

**39. Suppression of Material Facts—Intervention of King's Proctor—Rescission of Decree Nisi.**—In a suit by a husband for nullity of marriage upon the ground of his wife's incapacity to consummate the marriage, the wife did not defend and the husband gave evidence that the wife was *haud apta viro* and that the marriage had not been consummated. A decree *nisi* having been pronounced, the King's Proctor intervened upon the ground that material facts had been withheld from the Court—namely, that the wife was *apta viro* and that the marriage had been consummated. The Court, being satisfied upon the evidence of the wife and doctors that the wife was *apta viro* and that the marriage had been consummated, rescinded the decree *nisi*.

*T. v. T.*, 24 T. L. R. 580—Deane, J.

**(12) Practice.**

(a) *Appeals and New Trials.*

[No paragraphs in this vol. of the Digest.]

(b) *Arrangement of Lists.*

[No paragraphs in this vol. of the Digest.]

(c) *Contents of Petition.*

[No paragraphs in this vol. of the Digest.]

(d) *Delay.*

See No. 29, *supra*.

(e) *Divorce Bill.*

**40. Divorce Bill—Leave to Read Evidence taken on Commission—Service of Bill upon Husband in Burma—Access to Children—Maintenance.**—Upon a wife promoting a divorce bill, the House of Lords granted leave for evidence taken on commission to be read to the House, and for service of the bill upon the husband in Burma to be proved by a solicitor's affidavit.

The bill being read a second time, it was left to counsel to settle the question of maintenance; the husband to have reasonable access to the

children; no order as to costs, the clause as to costs being withdrawn.

*HURLEY'S DIVORCE BILL*, [1908] W. N. 41, [124, 136—H. L.

**(f) Evidence.**

**41. Commission—Commission before Service of Petition and Citation.**—In a proper case a commission to take evidence in a matrimonial suit may issue before service of the petition and citation.

*GRIBBON v. GRIBBON*, 52 Sol. Jo. 193—Deane, J.

**42. Confession of Adultery—Lack of Corroboration—No Co-respondent to Suit—Practice.**—There is no absolute rule that the Court will require corroborative evidence of a confession of adultery on the part of the respondent to a divorce suit. The test to be applied is whether the whole of the circumstances of the case are such as to convince the Court that the confession is true. It is not necessary, if the Court is of opinion that the confession is made in good faith and can be relied upon, that there should be any independent corroborative evidence of the adultery forthcoming.

*GETTY v. GETTY*, [1907] P. 334; 76 L. J. P. [158; 98 L. T. 60—Bucknill, J.

**(g) Hearing.**

**43. Nullity Suit—Cross Charges of Incapacity—Right to Begin.**—A wife presented a suit for judicial separation on the ground of the husband's alleged cruelty. The husband by his answer denied the charges of cruelty, and claimed a decree of nullity on the ground of the wife's incapacity. The wife then amended her petition, and after denying the husband's allegation, sought a declaration of nullity on the ground of the husband's incapacity.

**HELD**—that at the trial the burden of proof was on the wife, who had, therefore, the right to begin.

*L. v. L. (OTHERWISE M.)*, 25 T. L. R. 43; 53 Sol. [Jo. 32—Barnes, Pres.

**44. Witnesses—Contested Probate and Matrimonial Causes.**—In contested probate and matrimonial causes the witnesses (other than medical witnesses) must, as a general rule, remain out of Court until called.

Practice Note—Barnes, Pres.

But the rule does not apply to medical witnesses, see *Gadd v. Munday*, *Times*, July 15th, 1908—Deane, J.

(h) *Interlocutory Proceedings.*

[No paragraphs in this vol. of the Digest.]

(i) *Intervention of Third Party.*

[No paragraphs in this vol. of the Digest.]

(j) *Notice, Service and Stay of Proceedings.*

[No paragraphs in this vol. of the Digest.]



**Matrimonial Causes in the High Court—Continued.**

(k) *Miscellaneous.*

**45. Amendment of Petition—Wife's Petition—Mistake in Name of Person with whom Adultery Alleged—Notice of Amendment.**—A wife filed a petition for divorce, alleging adultery by her husband with a certain woman, who intervened and denied the allegation. Subsequently it was discovered that a mistake had been made, and that the adultery alleged should have been with another woman. The petitioner applied, without giving notice to the respondent or the intervener, to amend the petition by striking out the name of the intervener and inserting that of the other woman.

The Court allowed the amendment, the petition to be re-served on the respondent and the intervener to have her costs and an apology.

**HARDING-COX v. HARDING-COX**, 24 T. L. R. 634; [52 Sol. Jo. 518—Deane, J.]

**46. Death of Petitioner—Orders for Costs and Alimony—Adding Executors.**—A wife presented a petition for divorce, and the husband was ordered to pay alimony *pendente lite* and to pay the taxed costs up to a certain stage. The wife died before the petition was heard. Her executors applied to be added as petitioners so as to enable them to enforce the above orders.

The Court refused to make the order, but gave the executors leave to have the costs taxed.

**SCHENCK v. SCHENCK**, 24 T. L. R. 739; 52 Sol. [Jo. 551—Deane, J.]

**47. Decree—Rectification—Omission of Marriage Ceremony before Registrar.**—A wife having been married to her husband, first at a register office, and afterwards in church, obtained a decree absolute for divorce. In the petition, the decree *nisi*, and the decree absolute only the ceremony in church was referred to.

The Court allowed the decrees to be rectified, upon the petition being amended, and an affidavit of service filed.

**HAMPSON v. HAMPSON**, [1908] P. 355; 77 [L. J. P. 148; 24 T. L. R. 868; 52 Sol. Jo. 729—Barnes, Pres.]

**48. Motion by Respondent for Decree Nisi to be Made Absolute—Necessary Costs—Practice.**—Where a respondent husband asks that a wife shall elect to have a decree *nisi* made absolute or have her petition dismissed, the decree *nisi* may be made absolute on the husband providing the necessary costs.

**GOLD v. GOLD**, 52 Sol. Jo. 717—Barnes, Pres.

**XII. PROTECTION ORDER.**

[No paragraphs in this vol. of the Digest.]

**XIII. RESTITUTION OF CONJUGAL RIGHTS.**

**49. Alimony—Subsequent Decree for Judicial Separation—Application for Permanent Alimony—Wife in Penal Servitude—Matrimonial Causes Act, 1884 (47 & 48 Vict. c. 68), ss. 2, 5.**—A wife obtained a decree for

restitution of conjugal rights. Pending the hearing of such suit an order was made under sect. 1 of the Matrimonial Causes Act, 1884, for alimony at the rate of £330 a year. Subsequently she filed a petition for judicial separation, and she also filed a petition for alimony *pendente lite* which was by consent fixed at £330 a year. A decree for judicial separation was made; she did not, however, file a petition for permanent alimony, but applied to the Registrar under the alimony petition in the restitution suit and asked for permanent alimony in that suit. Before the hearing of the application she was sentenced to five years' penal servitude.

**HELD**—first, that the wife by proceeding for a judicial separation had abandoned her rights as to alimony under the Matrimonial Causes Act, 1884; and, secondly, that under the circumstances there should at present be no inquiry or order as to permanent alimony.

**Kelly v. Kelly** (1863), 32 L. J. P. & M. 181 distinguished.

**LESLIE v. LESLIE**, [1908] P. 99; 77 L. J. P. 23; [98 L. T. 62; 24 T. L. R. 148—Deane, J.]

**50. Alimony Pendente Lite—Discretion—Allowance to Wife under Voluntary Settlement—Covenant to Accept Allowance in Full Satisfaction.**—Where a wife has agreed to live separate from her husband in consideration of a settlement, and subsequently presents a petition for restitution of conjugal rights, the Court will not (and possibly cannot) award her as alimony *pendente lite* a greater sum than she consented to accept under the deed.

**BIRCH v. BIRCH**, [1908] W. N. 81—C. A.

**51. Grounds for—Inadequate Allowance by Husband to Wife Living Apart.**—Restitution of conjugal rights decreed where the husband refused to live with his wife and only made her an allowance which was inadequate.

**WINKWORTH v. WINKWORTH**, 25 T. L. R. 54—[Barnes, Pres.]

**52. Suit for Restitution—Separation Deed—Coercion by Respondent—Deed held No Answer.**—This was a petition for restitution of conjugal rights. It appeared at the hearing, though it was not alleged in the petition, that the respondent, a solicitor, had coerced the petitioner into signing a separation deed whereby she agreed, *inter alia*, not to institute proceedings for restitution of conjugal rights. She was not separately advised in the matter. The Judge adjourned the case in order that the respondent, who had not appeared, might be communicated with. At a later date, after the respondent had admitted the coercion, but still refused to appear, his Lordship found as a fact that the petitioner was not a consenting party to the deed, and granted a decree for restitution of conjugal rights.

**TURNER v. TURNER**, *Times*, May 18th, 1908—[Bucknill, J.]

## XIV. VARIATION OF SETTLEMENTS.

**53. Nullity — Variation of Settlements — Matrimonial Causes Act, 1907 (7 Edw. 7, c. 12), s. 1.]**—By a marriage settlement the respondent, the intended husband, transferred certain funds to trustees upon trust for the respondent for life and then for the petitioner for life, with an absolute reversion to the respondent in the event of there being no issue of the marriage. The marriage took place, but on the wife's petition a decree of nullity was made on the ground of respondent's impotence. In proceedings to vary the settlement the registrar reported that the respondent's income under the settlement was about £274 a year, that he had a further income of £400 a year, and that the petitioner had £97 a year from certain trust funds (not the subject of the settlement), together with a voluntary allowance of £100 a year from her stepmother. The registrar recommended that an order be made upon the trustees to pay out of the funds the subject of the settlement £100 a year to the petitioner for her life. On motion to confirm the registrar's report:—

**HELD**—that since the decision in *Dormer v. Ward*, [1901] P. 20 (69 L. J. P. 144; 83 L. T. 556; 49 W. R. 149—C. A.) and the Matrimonial Causes Act, 1907, the proper procedure in such a case was to apply under the latter Act for an order to secure an allowance to the wife; and the Court made an order under that Act that £100 a year be secured to the wife *dum sola*, that trustees be appointed, that the matter be referred to the conveying counsel to settle a proper deed, and that the trustees should pay the income to the respondent to be by him paid to the petitioner.

**SHARPE (OTHERWISE MORGAN) v. SHARPE**, 25 [T. L. R. 131—Deane, J.]

**54. Practice—Service of Petition on Third Person—Right to be Heard—Objection—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5—Divorce Rules, r. 97.]**—A certified copy of a petition for variation of a settlement was served on M. in accordance with r. 97 of the Divorce Rules. M. filed a reply to the petition, to which the petitioner filed an answer. On an appointment to proceed coming before the registrar, no objection was taken to M.'s appearance. The appointment was adjourned to enable the petitioner to file a further answer to M.'s reply. At the adjourned appointment objection was taken that M. had no interest under the settlement and was not entitled to be heard. The objection was upheld by the registrar, and his order was affirmed by Deane, J. M. appealed.

**HELD**—that the application that M. be not heard was a wrong application, and that, before making such an application, the petitioner, who had brought M. before the Court as a litigant, should have taken out a summons to get M. discharged from all proceedings on the petition on payment by the petitioner of all costs incurred.

**VIVIAN (LORD) v. VIVIAN (LADY) AND CUR-PHEY**, 25 T. L. R. 157—C. A.

**55. Settlement—Guilty Wife taking no Absolute Interest, but Subject to Trustees' Discretion—Power to Vary—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61).]**—The Court has power under the Matrimonial Causes Act, 1859, to make an order dealing with property which is so settled that a guilty wife takes no absolute interest in it, but is dependent upon the discretion of the trustees.

**VALLANCE v. VALLANCE**, 77 L. J. P. 33— [Deane, J.]

**56. Settlement—Deed—Respondent Altering—Jurisdiction to Order Execution of Proper Deed by Respondent now Domiciled Abroad—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 45—Matrimonial Causes Act, 1860 (23 & 24 Vict. c. 144), s. 6.]**—The Court has power to order the rectification of a deed of settlement to comply with its original direction, although one of the parties by remarriage has in the meantime become domiciled without the jurisdiction, and it will order such party to sign a fresh deed if necessary.

**REES v. REES AND ANOTHER**, 52 Sol. Jo. 445— [Bucknill, J.]

**57. Settlement—Application for—Capital and Income—Principle on which Court Acts—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 45.]**—Upon an application by a husband, who has obtained a divorce from his wife on the ground of her adultery, under sect. 45 of the Matrimonial Causes Act, 1857, for a settlement of the wife's property, the Court has full power to act as it may think reasonable or just in the circumstances of the case. In general it will act on the same principles as it does in varying settlements; but it has power to deal with capital as well as income.

The guiding principle is that the Court must try to ascertain and rectify the pecuniary change brought about by the wife's misconduct, and, in order to do that, it must look at the probable pecuniary position which the husband, the wife, and the issue of the marriage would have occupied if the marriage had not been dissolved owing to the wife's misconduct.

**LORRIMAN v. LORRIMAN AND ANOTHER**, [1908] [P. 282; 77 L. J. P. 108; 99 L. T. 314; 24 T. L. R. 575; 52 Sol. Jo. 499—Bucknill, J.]

**58. Settlement—Husband's Divorce—Agreement to make Unconditional Allowance—Deed to be Settled by Registrar—Dum solo et casta Clause—Appeal from Registrar as to Form of Deed.]**—A husband, having obtained a decree for divorce, agreed, by his counsel, to make an unconditional allowance of £100 a year to his wife, the registrar to settle the deed in the event of the parties being unable to agree upon the terms. The parties not agreeing, the registrar settled the deed, inserting a *dum solo et casta* clause.

**HELD**—that as the parties had agreed to refer the settlement of the deed to the registrar, no appeal lay.

**E. v. E., P., AND N.**, 24 T. L. R. 858; 52 Sol. Jo. [699—Deane, J.]

## XV. SUMMARY PROCEEDINGS IN MATRIMONIAL CAUSES.

### (a) Cruelty and Drunkenness.

[No paragraphs in this vol. of the Digest.]

### (b) Desertion.

**59. Marriage Induced by Wife's False Statement—Desertion by Husband—Reasonable Cause—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).]**—A husband deserted his wife on discovering (as he alleged) the falsity of a statement made by her to him before marriage as to the paternity of a child conceived before marriage.

**HELD**—that this was not a reasonable cause or excuse.

**HOLT v. HOLT**, 53 Sol. Jo. 84—Div. Ct.

**60. Desertion—Agreement to Live Apart—Written or Parol—"Grounds" of Decision not Stated in "Notes"—Insufficient Statement of Facts.]**—At the hearing of an appeal from a separation order granted by justices by reason of the husband's desertion, it appeared from the notice of appeal that it was based upon the justices finding that an agreement to live apart must be in writing, signed and sealed by the parties. For the respondent it was alleged that the justices found, as the "grounds" of their decision, that there had been no agreement to live apart either written or parol. These "grounds" were not in the "notes" supplied to the Court, and appeared to have been communicated to the appellant after notice of appeal had been given. What caused the original separation was not stated.

**HELD**—that the "grounds" ought to have been set out in the "notes"; that the Court was not able to deal with the appeal as all the facts were not really before it; and that the case must go back for a full rehearing, the respondent to have the costs of the appeal.

**BOWEN v. BOWEN**, *Times*, November 20th, 1908  
[—Div. Ct.]

### (c) Evidence.

[No paragraphs in this vol. of the Digest.]

### (d) Jurisdiction.

[No paragraphs in this vol. of the Digest.]

### (e) Maintenance.

[No paragraphs in this vol. of the Digest.]

### (f) Practice: Appeals, Notes, Costs.

**61. Appeal from Justices—Notes of Evidence—Shorthand Notes—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 4.]**—It is the duty of the justices' clerk, in proceedings under the Summary Jurisdiction (Married Women) Act, 1895, to take a note of the proceedings and of the reasons for the justices' decision.

If the parties desire an ordinary note they are entitled to have it unless a shorthand note is provided free of cost; there is no justification

for the parties being put to the extra cost of a shorthand note.

If a shorthand note is taken the justices' clerk ought to verify it.

**ROYLE v. ROYLE**, 25 T. L. R. 84; 53 Sol. Jo. 119  
[—Barnes, Pres.]

## IDIOTS.

*See* LUNATICS AND PERSONS OF UNSOUND MIND.

## ILLEGAL ARREST AND IMPRISONMENT.

*See* CRIMINAL LAW; TRESPASS.

## ILLEGAL CONTRACTS.

*See* CONTRACT.

## ILLEGITIMACY.

*See* BASTARDY.

## IMBECILITY.

*See* LUNATICS.

## IMMIGRATION.

*See* ALIENS.

## IMMORAL CONTRACTS.

*See* CONTRACT.

## IMPRISONMENT.

*See* CRIMINAL LAW AND PROCEDURE; PRISONS AND REFORMATORIES.

## IMPROVEMENT OF LAND.

*See* REAL PROPERTY AND CHATTELS  
REAL.

## INCLOSURE.

*See* COMMONS; COPYHOLDS AND MANORS; HIGHWAYS; OPEN SPACES.



## INCOME AND CAPITAL.

See REAL PROPERTY AND CHATTELS  
REAL; SETTLEMENTS; TRUSTS;  
WILLS.

## INCOME TAX.

	COL.
I. TAXABLE INCOME.	
(a) In General . . . . .	295
(b) Profits earned Abroad . . . . .	296
II. ASSESSMENT AND COLLECTION.	
(a) In General . . . . .	297
(b) Deductions . . . . .	298
III. DEDUCTION OF TAX FROM RENT OR ANNUAL PAYMENTS . . . . .	299
[No paragraphs in this vol. of the Digest.]	

### I. TAXABLE INCOME.

#### (a) In General.

1. "Easter Offerings"—Vicar of Parish—"Profits Accruing by Reason of such Office"—*Income Tax Act, 1842* (5 & 6 Vict. c. 35), s. 146, *Sched. E, r. 1.*—"Easter offerings" given to the vicar of a parish, though voluntary personal gifts, are profits accruing to him by reason of his office, and are therefore assessable to income tax under *Sched. E.*

Decision of C. A. ([1907] 2 K. B. 688; 76 L. J. K. B. 1041; 97 L. T. 531; 23 T. L. R. 663) affirmed.

BLAKISTON v. COOPER, 25 T. L. R. 164; 53 Sol. [Jo. 149—H. L.]

2. *Exemption—Existing Tax—Income Tax in Future Years—Statute Binding Crown by Implication—Conservators of the River Thames—The Thames Conservancy Act, 1894* (57 & 58 Vict. c. clxxxvii.), s. 289.]—The exemption of lands above the City Stone above Staines Bridge vested in the Conservators of the River Thames from all Parliamentary rates, taxes, assessments and payments whatsoever conferred by sect. 289 of the *Thames Conservancy Act, 1894*, applies to income tax in all subsequent years, notwithstanding the fact that income tax is imposed annually.

STEWART v. THAMES CONSERVATORS, [1908] 1 [K. B. 893; 77 L. J. K. B. 396; 72 J. P. 181; 98 L. T. 900; 24 T. L. R. 333—Bray, J.]

3. *Exemption—University College—Charitable Purpose—Income Tax Act, 1842* (5 & 6 Vict. c. 35), s. 61 (*No. VI. Sched. A*); s. 88 (*Sched. C, r. 3*); s. 105 (*Sched. D*).—The University College of North Wales, founded by charter for the purpose of giving professional and commercial education, managed by a governing body having complete control, subject to the terms of the charter, of the college property, and supported by voluntary donations, devises and bequests, a Government grant, and payments by pupils, claimed exemption from income tax under *Scheds. A, C, and D* of the *Income Tax Act, 1842*, on the ground that the object of the college was a charitable purpose.

HELD—that the funds in the hands of the governing body were funds for the advancement of education, that the governors were trustees for charitable purposes to which the sums received by them were applied, and that therefore the college was entitled to the exemption claimed.

R. v. COMMISSIONERS OF INCOME TAX, EX PARTE [UNIVERSITY COLLEGE OF NORTH WALES, 72 J. P. 195; 98 L. T. 446; 24 T. L. R. 491; 52 Sol. Jo. 395; [1908] W. N. 92—Div. Ct.]

4. *Railway—Interest Guaranteed by South African Republic—Line taken by British Government—Payment of Arrears of Interest.*—On November 2nd, 1895, the South African Republic granted to S. a concession for the construction of a railway, and the Republic guaranteed to a company which was formed to take over the railway interest at 4 per cent. on its share capital. On October 11th, 1899, war having broken out, the line was seized and worked by the British military authorities until the end of the war. On February 18th, 1902, the British Government gave notice to expropriate the railway under the terms of the concession. They recognised the validity of the concession, and admitted liability to pay all arrears of interest. They paid £97,506 16s. 11d. as "guaranteed interest on share capital at 4 per cent. per annum from January 1st, 1899, to November 14th, 1903," in addition to the other payments on the expropriation.

HELD—that the £97,506 16s. 11d. was not part of a sum paid by the British Government as the price of the company's undertaking; that it must be treated as the gross revenue of the company earned as a trading company from January 1st, 1901, to November 4th, 1903, and that after deducting certain expenses incurred by the company during the same period the benefit of the three years' average must be applied, and income tax was payable on one-third of the balance only.

Decision of Walton, J. (95 L. T. 468) reversed.  
PRETORIA-PIETERSBURG RAILWAY Co., LD.,  
[v. ELGOOD, 98 L. T. 741—C. A.]

#### (b) Profits earned Abroad.

5. *Company Registered in England—Company Owning all the Shares in Foreign Company—Income Tax Act, 1853* (16 & 17 Vict. c. 34), *Sched. D*.]—An English company, registered under the Companies Acts, held all the shares in a German company which was registered as a joint stock company in Germany with limited liability. The members of the board of management of the German company were also directors of the English company, and the members of the board of supervision were nominees of the English company. Out of the profits of the German company for the year in question a sum of £15,000 was, in accordance with the requirements of German law, transferred to the patents' depreciation fund before dividing the profits. The Income Tax Commissioners came to the conclusion that the English company controlled

**Taxable Income—Continued.**

the German company from England, and that the entire business of the German company was carried on by and was the business of the English company, and that the £15,000 were profits of the English company assessable to income tax.

HELD—that, as the two companies were distinct entities, the fact that the English company owned all the shares in the German company did not make the German company the trustee or agent for the English company, that the profits of the German company were not the profits of the English company, and that therefore the English company were not assessable to income tax in respect of the £15,000.

*Apthorpe v. Peter Schoenhofen Brewery Co.* ((1899), 15 T. L. R. 245; 4 Tax Cas. 14) distinguished.

Decision of Walton, J. ([1906] 2 K. B. 856; 75 L. J. K. B. 1031; 95 L. T. 461; 22 T. L. R. 818) affirmed.

GRAMAPHONE AND TYPEWRITERS, LD. *v.* STANLEY, [1908] 2 K. B. 89; 77 L. J. K. B. 834; 99 L. T. 39; 24 T. L. R. 480; 15 Manson, 251—C. A.

**II. ASSESSMENT AND COLLECTION.****(a) In General.**

**6. Foreign Possessions—Business Carried on Abroad by Person Residing in United Kingdom—Managers Abroad—Principle of Assessment—Income Tax Act, 1842 (5 & 6 Vict. c. 35), Sched. D., Cases I. and V.]**—O., a British subject resident in Aberdeen, was the sole partner in the firm of O. and Sons, carrying on business in Toronto. The business was carried on by managers, who rendered weekly statements to O. The sole control was in O., who was entitled to all profits and liable for all debts.

HELD—that O. was assessable on the whole profits of the business under Case I. of Sched. D., and not merely on the profits received in the United Kingdom under Case V.

*OGILVIE v. INLAND REVENUE*, [1908] S. C. 1003 [—Ct. of Sess.

**7. Interest on Loans from Bankers—Claim for Return.]**—A suppliant petitioned the Crown for the return of a sum of money which he had paid as income tax. He had for many years been in the habit of borrowing large sums from his bankers for the purpose of investing them in various dividend-paying stocks and shares. Out of the taxed dividends he paid the interest on the loans from the bankers. In January, 1907, he applied to the Board of Inland Revenue for a return of income tax in respect of this interest. The Board returned to him part of the sum claimed, but refused to refund that which represented income tax on the interest charged for a loan not made by his usual bankers, but transferred to them within a period of less than twelve months. For the Crown it was contended that income tax on interest on short

loans could not be deducted at all, that the suppliant, even if entitled to deduct, must deduct it at the time, and could not recover it back from the Crown, there being no provision which enabled repayment when the payment had once been made.

HELD—that the suppliant was not entitled to recover.

*DE PEYER v. R.*, *Times*, July 14th, 1908—[Lawrance, J.

**8. Slaughterhouses of Local Authority—Self-supporting but not Profit-earning—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60, Sched. A.]**—Under a local statute the dues and rents charged in respect of public slaughterhouses were to be regulated triennially so as to render the concern self-supporting but not profit-earning.

HELD—that the slaughterhouses should be assessed for income tax purposes under r. 1 and not r. 3 of Sched. A.

*INLAND REVENUE v. EDINBURGH MAGISTRATES*, [1907] S. C. 1233—Ct. of Sess.

**(b) Deductions.**

**9. "Bad Debts"—Money Invested in Subsidiary Company and Lost—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D., s. 159—Income Tax Act, 1853 (16 & 17 Vict. c. 34), Sched. D.]**—A zinc smelting company, who required large quantities of "blende," formed a subsidiary company to acquire and work certain mines. They owned nearly all the capital in such company and from time to time advanced money to it by way of loans bearing interest; some of the advances were reported as being made against future deliveries of "blende." Very little was in fact delivered, and the subsidiary company went into liquidation owing a large balance to the parent company. No part of this balance was made up of advances against specific parcels of "blende."

HELD—that in returning its income for income tax purposes, the parent company could not deduct this lost balance as "bad debts;" it was an investment in a separate concern, and a capital expenditure.

*ENGLISH CROWN SPELTER CO. LD. v. BAKER*, [99 L. T. 353—Bray, J.

**10. Unexpired Insurance Risks—Fire and Accident Insurance Company—"Balance of Profits and Gains"—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D., Case I., r. 1.]**—In assessing a fire and accident insurance company to income tax upon the balance of their profits and gains on the average of the three years preceding the year of assessment, the proper method is to take the balance of the receipts from premiums and other sources over payments made in respect of losses and other proper deductions. It is not admissible to deduct from the premiums a part thereof for unexpired risks.

*Imperial Fire Insurance Co. v. Wilson* ((1876), 35 L. T. 271) approved and followed,

**Assessment and Collection—Continued.**

Decision of the Ct. of Sess. (1907) S. C. 1004 ; 44 Sc. L. R. 792) affirmed.

GENERAL ACCIDENT FIRE AND LIFE ASSUR-  
[ANCE CORPORATION, LD. *v.* MCGOWAN  
(SURVEYOR OF TAXES), [1908] A. C. 207 ;  
[1908] S. C. (H. L.) 24 ; 45 Sc. L. R. 681 ; 77  
L. J. P. C. 38 ; 98 L. T. 734 ; 24 T. L. R. 533 ;  
52 Sol. Jo. 455—H. L.

**III. DEDUCTION OF TAX FROM RENT OR ANNUAL PAYMENTS.**

[No paragraphs in this vol. of the Digest.]

**INCORPOREAL HEREDITA-  
MENTS.**

*See* REAL PROPERTY AND CHATTELS  
REAL.

**INDECENT ASSAULT.**

*See* CRIMINAL LAW.

**INDECENT EXPOSURE.**

*See* CRIMINAL LAW.

**INDEMNITY.**

*See* AGENCY ; COMPANIES, No. 46 ; CON-  
TRACT, Nos. 7, 14 ; GUARANTEE ;  
MASTER AND SERVANT ; STOCK  
EXCHANGE, No. 2.

**INDIA.**

*See* DEPENDENCIES AND COLONIES.

**INDICTMENTS AND IN-  
FORMATIONS.**

*See* CRIMINAL LAW AND PROCEDURE.

**INDUSTRIAL, PROVIDENT,  
AND SIMILAR SOCIETIES.**

*See* CLUBS ; FRIENDLY SOCIETIES.

**INDUSTRIAL SCHOOLS.**

*See* PRISONS AND REFORMATORIES.

**INEBRIATES.**

*See* INTOXICATING LIQUORS.

**INFANTS.**

I. CUSTODY OF INFANTS . . .	COL. 300
[No paragraphs in this vol. of the Digest.]	
II. GUARDIANSHIP . . .	300
[No paragraphs in this vol. of the Digest.]	
III. LIABILITY OF INFANTS.	
(a) Contracts . . .	300
(b) Necessaries . . .	300
(c) Torts . . .	300
[No paragraphs in this vol. of the Digest.]	
IV. PROPERTY OF INFANTS . . .	301

*See also* BASTARDY ; CONFLICT OF  
LAWS ; CONTEMPT, No. 4 ; CRIMINAL  
LAW ; EDUCATION ; HUSBAND AND  
WIFE ; MASTER AND SERVANT ;  
POOR LAW, No. 2.

**I. CUSTODY OF INFANTS.**

[No paragraphs in this vol. of the Digest.]

**II. GUARDIANSHIP.**

[No paragraphs in this vol. of the Digest.]

**III. LIABILITY OF INFANTS.****(a) Contracts.**

1. *Advance of Money—Promissory Note—Mis-  
representation as to Age—Infants' Relief Act, 1874*  
(37 & 38 Vict. c. 62), s. 1.]—The defendant,  
when under 21 years of age, borrowed from the  
plaintiff £500 and signed a promissory note for  
£700 payable in 4½ months. The defendant, at  
the time of the loan, represented to the plaintiff  
that he was over 21 years of age.

HELD—that the defendant was liable in equity  
on the note.

LEVENE *v.* BROUGHAM, 24 T. L. R. 801—  
[Ridley, J.]

**(b) Necessaries.**

2. *Actual Requirements—Infant Sufficiently  
Supplied—Burden of Proof—Sale of Goods Act,*  
1893 (56 & 57 Vict. c. 71), s. 2.]—Where a plain-  
tiff brings an action against a person who is an  
infant for goods supplied, and the latter pleads  
infancy, it lies upon the plaintiff to prove not  
only that the articles supplied were suitable to  
the condition of life of the infant, but also that  
he was not sufficiently supplied with goods of the  
particular character at the time of the sale and  
delivery.

NASH *v.* INMAN, [1908] 2 K. B. 1 ; 77 L. J. K. B.  
[626 ; 98 L. T. 658 ; 24 T. L. R. 401 ; 52  
Sol. Jo. 335—C. A.]

**(c) Torts.**

[No paragraphs in this vol. of the Digest.]



## IV. PROPERTY OF INFANTS.

**3. Real Estate of Infant—Sale by Order of Court to Pay Costs—Surplus—Conversion.]—**By an order of Court the whole of some real estate belonging to an infant was sold in order to pay certain costs. He subsequently married and died intestate.

**HELD**—that the surplus proceeds descended as personality to the next of kin.

*Steed v. Preece* ((1874), L. R. 18 Eq. 192; 43 L. J. Ch. 687) followed.

Decision of *Eve, J.* ([1908] 1 Ch. 880; 77 L. J. Ch. 432; 98 L. T. 668) reversed.

*BURGESS v. BOOTH*, [1908] 2 Ch. 648—C. A.

## INFECTIOUS DISEASES.

See ANIMALS; PUBLIC HEALTH.

## INHABITED HOUSE DUTY.

**1. Library—Librarian's Dwelling in Part of Building—Intercommunication between Master's Dwelling and Library—Liability of Proprietors to Assessment in Respect of Whole Premises.]—**The Liverpool Athenæum was an institution founded and maintained as a library and newsroom. The proprietors were the whole body of members, shareholders only being eligible as members. It was not conducted for profit, and it was maintained by the subscriptions of its members. The premises were all contained between four walls, and at one end of the building was the dwelling-house of the master or librarian, in which he resided, but no person slept in the library, which the master locked up at night, and opened in the morning. There was complete internal communication between the different parts of the premises, and the master by passing through doors and a passage had access from his dwelling to the various parts of the library. The master was appointed master and librarian at a salary, "with use of house, coals, and gas." He was provided in his dwelling with free lighting and coal, there being a common light and coal supply for the whole premises, and his employment could be terminated by a month's notice on either side. Upon an assessment of the premises to inhabited house duty:—

**HELD**—that the proprietors and not the master were in occupation of the master's dwelling, and that the whole premises constituted one subject-matter for assessment, and, part being inhabited, the proprietors were liable to inhabited house duty in respect of the whole premises, which were properly included in one assessment.

*FOSTER v. PROPRIETORS OF THE ATHENÆUM*  
[NEWSROOM AND LIBRARY, LIVERPOOL, 97  
L. T. 692—Bray, J.]

## INHERITANCE.

See DESCENT AND DISTRIBUTION; REAL PROPERTY AND CHATTELS REAL.

## INJUNCTIONS.

	COL.
I. INTERLOCUTORY . . . . .	302
[No paragraphs in this vol. of the Digest.]	
II. MANDATORY . . . . .	302
[No paragraphs in this vol. of the Digest.]	
III. GENERAL . . . . .	302
See also CONTEMPT; EASEMENTS, No. 8; MASTER AND SERVANT, No. 67a.	
I. INTERLOCUTORY.	
[No paragraphs in this vol. of the Digest.]	
II. MANDATORY.	
[No paragraphs in this vol. of the Digest.]	
III. GENERAL.	

**1. Injunction—Committal for Breach—Jurisdiction of Judge at Chambers—Injunction Continued after Judgment by Consent as Security for Damages—Irregularity.]—**This was an appeal by the defendant from the refusal of Jelf, J. to order her discharge from prison.

On January 15th, 1906, the plaintiff obtained an interim injunction restraining the defendant from selling or parting with certain furniture, the subject-matter of the action. Afterwards judgment was entered by consent for the plaintiff for £250, and the injunction continued till payment. On April 29th, 1907, Walton, J., made an order, on a summons taken out by the plaintiff, for the committal of the defendant for breach of the injunction. Nothing was done under the order till May 14th, 1908, when the defendant was arrested and imprisoned.

**HELD**—that, apart from the doubt as to a Judge at chambers having jurisdiction to make a committal order as distinguished from an order for attachment, there was no evidence to support the application to commit, that after the judgment by consent the injunction stood merely as security for payment of the judgment debt, and that the defendant had been sent to prison for not paying that debt, which was contrary to the Debtors Act.

*PRUDHOE v. POST*, *Times*, May 29th, 1908—C. A.

**2. Injunction to Restrain Breach—Covenant Negative in Form, but Affirmative in Substance.]—**A stipulation by an agent not to give notice to leave his principal's service is, though negative in form, affirmative in substance, and ought not to be enforced by injunction.

*Davis v. Foreman* ([1894] 3 Ch. 654; 33 W. R. 168—Kekewich, J.) followed.

*KIRCHNER & Co. v. GRUBAN*, 53 Sol. Jo. 151—  
[*Eve, J.*]

## INJURIES TO PASSENGERS.

See NEGLIGENCE AND RAILWAYS.

## INNS AND INNKEEPERS.

- I. DUTY TO RECEIVE GUESTS . . . COL. 303  
[No paragraphs in this vol. of the Digest.]
- II. LIABILITY FOR LOSS OF GOODS . . . 303  
*And see INTOXICATING LIQUORS; LANDLORD AND TENANT.*

### I. DUTY TO RECEIVE GUESTS.

[No paragraphs in this vol. of the Digest.]

### II. LIABILITY FOR LOSS OF GOODS.

1. *Goods of Guest — Liability for — Costs of Guests' Accommodation Provided by other Person — One Club Entertaining Another.*—The B. hockey club arranged with an innkeeper for the use of a "changing" room for two hours on Saturday afternoons during the season; he charged so much for the room, and supplied tea at so much per head to the B. club team and the visiting team.

On one afternoon the room was entered during the match, and the watches belonging to the visiting players were stolen. They afterwards had tea as usual in another room in the inn.

HELD—that the innkeeper was liable to the visiting team for the loss of their watches, although they were not themselves going to pay him for the accommodation and tea provided for them.

WRIGHT v. ANDERTON, 25 T. L. R. 156; 53 [Sol. Jo. 135; [1908] W. N. 258—Div. Ct.

2. *Goods of Guest—Limitation of Liability—"Deposited Expressly for Safe Custody"—"Neglect of Such Innkeeper"—Innkeepers' Liability Act, 1863 (26 & 27 Vict. c. 41), s. 1.*—By sect. 1 of the Innkeepers' Liability Act, 1863, "no innkeeper shall . . . be liable to make good to any guest of such innkeeper any loss of or injury to goods or property brought to his inn . . . to a greater amount than the sum of £30, except in the following cases (that is to say):—(1) Where such goods or property shall have been stolen, lost, or injured through the wilful act, default, or neglect of such innkeeper or any servant in his employ; (2) where such goods or property shall have been deposited expressly for the safe custody with such innkeeper."

A jeweller's traveller arrived at an hotel with a bag containing jewellery exceeding the value of £30. He handed the bag to the hotel porter, who knew that it contained jewellery, and who placed it in the hotel office, which was the place commonly used for the deposit of bags containing jewellery. The traveller had been in the habit of stopping at the hotel for some years, and his bag containing jewellery had always been deposited either in the office or in the parlour behind it, and he had been in the habit of taking it to his bedroom at night. Nothing was said to the hotel proprietor as to the safe custody of the bag when the hotel porter placed the bag in the office. Later in the day it was discovered that the bag had been stolen.

HELD (Lord Collins dissenting)—that on the facts the bag had not been "deposited expressly

for safe custody" with the hotel proprietor, nor had it been proved that the bag was stolen through the neglect of the hotel proprietor, within the meaning of sect. 1 of the Innkeepers' Liability Act, 1863.

Decision of the Court of Session ([1908] Sess. Cas. 218) affirmed.

WHITEHOUSE v. PICKETT AND ANOTHER [H. L.] [1908] A. C. 357; [1908] S. C. (H. L.) 31; 45 Sc. L. R. 732; 77 L. J. P. C. 89; 99 L. T. 367; 24 T. L. R. 767; 52 Sol. Jo. 620—H. L. (Sc.)

## INNS OF COURT.

*See* BARRISTERS.

## INQUEST.

*See* CORONER.

## INSANITY.

*See* LUNATICS.

## INSOLVENCY.

*See* BANKRUPTCY AND INSOLVENCY.

## INSURANCE.

- |   |   |
|---|---|
|   | COL.  |
| I. ACCIDENT . . . . .   | 305   |
| II. FIRE . . . . .  | 306   |
| III. GENERAL . . . . .  | 307   |
|   | [No paragraphs in this vol. of the Digest.] |
| IV. LIFE.   |   |
| (a) Avoidance of Policy and Recovery of Premium: Insurable Interest . . . . . | 307   |
| (b) "Carrying on Business" . . . . .  | 310   |
|   | [No paragraphs in this vol. of the Digest.] |
| (c) Construction of Policy . . . . .  | 310   |
| (d) Jurisdiction of Justices . . . . .  | 311   |
|   | [No paragraphs in this vol. of the Digest.] |
| (e) Practice . . . . .  | 311   |
|   | [No paragraphs in this vol. of the Digest.] |
| (f) Transfer, Mortgage, and Alteration of Rights . . . . .                    | 311   |
| (g) Miscellaneous . . . . .   | 311   |
| V. MARINE.  |   |
| (a) Brokers' Rights and Liabilities . . . . .                                 | 311   |
| (b) Collision . . . . .   | 311   |
|   | [No paragraphs in this vol. of the Digest.] |
| (c) Concealment . . . . .   | 311   |
|   | [No paragraphs in this vol. of the Digest.] |

**Insurance—Continued.**

V. MARINE—Continued.	COL.
(d) Construction . . . . .	311
(e) Damages and Contribution . . . . .	313
[No paragraphs in this vol. of the Digest.]	
(f) Freight and Cargo . . . . .	313
(g) General Average . . . . .	313
(h) Insurable Interest . . . . .	314
[No paragraphs in this vol. of the Digest.]	
(i) Mortgages and Assignments. . . . .	314
[No paragraphs in this vol. of the Digest.]	
(j) Practice . . . . .	314
[No paragraphs in this vol. of the Digest.]	
(k) Risk : Nature, Duration, Change, etc. . . . .	314
(l) Seaworthiness . . . . .	315
[No paragraphs in this vol. of the Digest.]	
(m) Subrogation . . . . .	315
(n) Time Policies and Valued Policies	316
(o) Total Loss, and Constructive Total Loss. . . . .	317
(p) Warranty . . . . .	317

And see **BILLS OF SALE, No. 6 : CONTRACTS; EVIDENCE; MISREPRESENTATION AND FRAUD; REVENUE.**

**I. ACCIDENT.**

**1. Accident Direct or Proximate Cause of Death—Disease or Other Intervening Cause—Pneumonia Caused by Exposure to Wet.**—A policy of insurance against accident provided for the payment of a sum of money to the insured's personal representative if the insured should sustain any bodily injury caused by violent, accidental, external, and visible means, and if such injury should within three months of the accident directly cause the death of the insured; and the policy further provided that "this policy only insures against death . . . where accident within the meaning of the policy is the direct or proximate cause thereof, but not where the direct or proximate cause thereof is disease or other intervening cause, even although the disease or other intervening cause may itself have been aggravated by such accident, or have been due to weakness or exhaustion consequent thereon, or the death accelerated thereby." The insured when hunting was thrown off his horse and got wet. In consequence he suffered a severe shock to the nervous system whereby the general vitality of his body was impaired. He then rode home. The next day the insured travelled to London and transacted business there. The journey to London and the day's work there impaired still further his vitality, and on that afternoon he developed pneumonia, from which he died. Pneumonia was caused by the germ called pneumo-coccus, which was generally present in the normally healthy, but which multiplied when the vitality became impaired and caused pneumonia.

**HELD**—that the death was caused by an accident within the meaning of the policy.

**IN RE ETHERINGTON AND LANCASHIRE AND [YORKSHIRE ACCIDENT INSURANCE CO., 24 T. L. R. 784; 52 Sol. Jo. 661—Channell J.**

**II. FIRE.**

**2. Condition in Policy making Arbitration and Award a Condition Precedent to Liability of Insurance—Differences—Fraud.**—A policy of insurance against fire contained conditions—(a) that fraud on the part of the insured should cause a forfeiture of all benefit under the policy; (b) that all differences arising out of the policy should be referred to arbitration, and the obtaining of the award should be a condition precedent to any liability or right of action against the insurers in respect of any claim or of "any other matter in difference." The property having been damaged by fire, a claim was sent in, and arbitrators duly appointed. The award found that the claim was fraudulent, and that all benefit under the policy was forfeited.

In an action to set aside the award or, in the alternative, for an account of what was due under the policy:—

**HELD**—that the issue of fraud was a "difference" arising out of the policy; that the principle of *Scott v. Avery* is not limited to an ascertainment of pecuniary loss, but makes an award respecting all differences under such a condition a condition precedent to the maintenance of the action; and that the plaintiff was therefore bound by the award against him, and could not sue upon the policy.

**GAW v. BRITISH LAW FIRE INSURANCE CO., [[1908] 1 I. R. 245—C. A.**

**3. Practice as to "Ships' Papers."—Applicability—R.S.C., Ord. 31, r. 1.**—The practice with regard to ordering discovery of "ships' papers" in actions arising out of marine insurance is peculiar to that class of action; analogous orders cannot be made in fire insurance cases.

**TANNENBAUM & Co. v. HEATH & Co., [1908] 1 K. B. 1032; 77 L. J. K. B. 634; 99 L. T. 237; 24 T. L. R. 450; 52 Sol. Jo. 375; 13 Com. Cas. 264.—C. A.**

**4. Settled Land—Mansion-House in Provinces—Settled Chattels—Destruction by Fire—Insurances as Effected by Trustees—Premiums Paid out of Income of Infant Life Tenant—Rebuilding—Title to Policy Moneys—Fires Prevention (Metropolis) Act, 1774 (14 Geo. 3, c. 78), s. 83.**—*Semble*, sect. 83 of the Fires Prevention (Metropolis) Act, 1774, is not confined in its operation to the metropolis.

Trustees of a settled estate in the country insured in their own names the mansion-house and certain settled chattels and furniture. The premiums were paid out of the income accruing for the infant life tenant. The house and chattels were destroyed by fire, and the trustees recovered £7,000 on the house policy and £1,244 on the chattel policy.

The trustees, the infant life tenant, and the remaindermen all desired the house to be rebuilt and refurbished, but the infant life tenant, who was not bound to insure, claimed that, as the premiums had been paid out of his income, the policy moneys in the hands of the trustees were his, and that he was entitled to a charge for any amount expended,



**Fire—Continued.**

**HELD**—that, under sect. 83 of the Act of 1774 the remaindermen were entitled to have the £7,000 applied in rebuilding, and the life tenant was not entitled to a charge; but that he was entitled to the £1,244 to which the Act did not apply.

*Seymour v. Vernon* ((1852), 16 Jur. 189) and *Gaussen v. Whatman* ((1905), 93 L. T. 101) discussed.

**IN RE QUICKE, POLTIMORE v. QUICKE**, [1908] 1 Ch. 887; 74 L. J. Ch. 523; 98 L. T. 610—**Eady, J.**

**III. GENERAL.**

[No paragraphs in this vol. of the Digest.]

**IV. LIFE.****(a) Avoidance of Policy and Recovery of Premium: Insurable Interest.**

*See also* No. 11, *infra*.

**5. Avoidance of Policy—Misstatement bonâ fide made—Concealment—Material Fact—Answers to Medical Officer—Basis of Contract.**—In a proposal in 1902 for a policy on her life the applicant answered certain questions and signed a declaration that to the best of her knowledge and belief the particulars given were true, and she agreed that the proposal and declaration should be the basis of the contract. Subsequently the insurance company sent a document to Dr. S., a doctor selected by them, which stated that a proposal for insurance had been made, and the company submitted the case to him, requesting him to obtain answers from the applicant to the questions on the paper, and to make such investigation as to her health as would enable him to give the company his opinion. The document then went on:—"Questions to be put to the applicant (with any necessary explanation) by the medical officer, who will fill in the applicant's answers." Then followed a list of questions relating to the health of the applicant and of the members of her family, questions 7 and 9 being—" (7) What medical men have you consulted? When? and what for?" Answer—"Dr. T., rarely; colds.—Dr. H., last spring; measles." "(9) Have you at any time had, and, if so, when, any of the following ailments, viz. :— (b) . . . mental derangement . . . ?" Answer—"No." The applicant signed a declaration at the foot of the questions that, with reference to the proposal for insurance and her former declaration, the answers to the foregoing questions were true. The doctor gave his answers to the questions put to him by the company, and his opinion, and sent them the documents so filled in, and a policy was issued. In 1906 the assured committed suicide. It appeared that in December, 1894, the applicant had consulted a Dr. M. for a severe attack of influenza followed by nervous depression that developed into acute mania, and that she was for about seven months in charge of a doctor at a private establishment, when she gradually recovered and was discharged. The applicant thought that she was only suffering from a nervous breakdown and was undergoing a rest cure, and she told Dr. T. this. Dr. S. was

not called at the trial. In an action on the policy the jury found that the deceased did not know in 1902 that she had suffered from mental derangement; that she had foolishly, but not fraudulently, concealed the fact that she had consulted Dr. M. for nervous depression; and that the fact that she had consulted Dr. M. for nervous breakdown was material for the company to know. Judgment having been entered for the company:—

**HELD**—that the applicant's answers to the questions put to her by Dr. S. were not made the basis of the contract; and that with reference to the concealment of Dr. M.'s name, inasmuch as the doctor who saw the applicant and wrote down her answers was empowered to make any necessary explanation to her, and as he was not called at the trial to say what passed between them, it was impossible to say whether there was any concealment or not, and there must be a new trial.

Judgment of Lord Alverstone, C. J. ([1908] 2 K. B. 431; 24 T. L. R. 632; 52 Sol. Jo. 517) set aside.

**JOEL v. LAW UNION AND CROWN INSURANCE [Co.]**, [1908] 2 K. B. 863; 77 L. J. K. B. 1108; 24 T. L. R. 898; 52 Sol. Jo. 740—**C. A.**

**6. Policy Void if Assured Commits Suicide—Saving of bonâ fide Interest of Third Parties Based on Valuable Consideration—Suicide of Assured—Assignment of Policy—Non-communication of Assignment to Assignee.**—A policy of insurance for £5,000 on the life of H. contained the following clause:—"Policies will also be void . . . if the lives assured die by their own hands . . . but without prejudice to the bonâ fide interest of third parties based on valuable consideration." H., who was indebted to W. to the amount of £15,000, and had given him some security therefor, instructed his solicitors to prepare an assignment of his life policy to W. to secure the debt. The assignment was accordingly prepared and executed by H., but it was never communicated to W., and shortly afterwards it was destroyed on H.'s express instructions. A few days later H. committed suicide. Subsequently in the administration of his estate, the facts in connection with the assignment became known for the first time to the executors of W. (who had died in the meantime), and they thereupon gave notice of it to the defendants, and claimed payment of the moneys assured by the policy.

**HELD**—that the action failed, as the plaintiffs could claim no interest under the deed of assignment based on valuable consideration.

**WIGAN v. ENGLISH AND SCOTTISH LAW LIFE [ASSURANCE ASSOCIATION]**, [1908] W. N. 236; 25 T. L. R. 81—**Parker, J.**

**7. Recovery of Premiums—Representation by Agent—Authority of Agent—Inducing Assured to Continue Policy—Recovery by Assured of Premiums Paid.**—The plaintiff took out a policy of insurance with the defendants through an agent of the latter upon the life of another. The policy provided for the payment of the premiums during

**Life—Continued.**

the life of the person whose life was insured; and one of the conditions was that all alterations in the policy must be made and signed at the defendants' office on their printed and stamped forms. After paying one year's premiums, upon the plaintiff stating that she would pay no more premiums, the agent told her that when she had paid five years' premiums in all she would be entitled to the policy free of future premiums. The plaintiff thereupon paid the premiums for four years more, and refused to pay any further premiums. The defendants, who had not authorised the agent's representation, demanded premiums after the five years as a condition of the policy being kept on foot. The plaintiff thereupon sued to recover the four years' premiums.

**HELD**—that plaintiff was entitled to recover, per Buckley, L. J., as money obtained for the defendants by their agent's fraud; per Lord Alverstone, C. J., as damages in an action of deceit; and per Lord Alverstone, C. J., and Barnes, Pres., because the plaintiff had an option to avoid the contract as having been induced by misrepresentation, although until she did so the defendants could have been sued upon it, and that therefore she could sue for the premiums as money received to her use.

Decision of Div. Ct. ([1907] 2 K. B. 242; 76 L. J. K. B. 711; 97 L. T. 106; 23 T. L. R. 506) affirmed.

**KETTLEWELL v. REFUGE ASSURANCE CO., LD.**,  
[1908] 1 K. B. 545; 77 L. J. K. B. 421;  
97 L. T. 896; 24 T. L. R. 217; 52 Sol. Jo.  
158—C. A.

**8. Representation by Agent—Authority of Agent—Local Superintendent.**—The plaintiff effected a policy of insurance with the defendant company on the life of her husband for £150, there being an endorsement on the policy that the sum assured was £37 10s. for the first year, after which it was to increase at the rate of £37 10s. per year until it reached the full sum of £150. In the negotiations for the policy and before the first premium was paid the superintendent of the branch office where the insurance was effected, without having actual authority from the defendants to do so, promised the plaintiff that she would be paid the full sum of £150 if her husband died from accident as distinguished from disease even before the expiration of the third year of the insurance. The husband was accidentally drowned during the second year of the insurance.

**HELD**—that the superintendent had no ostensible authority to make the promise, and that the defendants were not liable for more than £75.

**COMERFORD v. BRITANNIC ASSURANCE CO., 24**  
[T. L. R. 593—Bray, J.]

**9. Insurable Interest—Husband and Wife—Wife performing Household Duties—Loss occasioned by her Death.**—An insurance society issued to a husband and wife a policy on their joint lives, the premium to cease and the sum

insured to become payable to the survivor upon the death of such of them as should die first. The wife having died first, the husband claimed the insurance moneys. The society alleged that the husband had no insurable interest in his wife's life. It appeared that the wife used to perform household duties and look after the children, and the husband on her death had to incur extra expense and employ a servant.

**HELD**—that the husband had, in the circumstances, an insurable interest in his wife's life, and was entitled to recover.

**GRIFFITHS v. FLEMMING AND OTHERS, 99 L. T.**  
[29; 24 T. L. R. 700—Pickford, J.]

**(b) "Carrying on Business."**

[No paragraphs in this vol. of the Digest.]

**(c) Construction of Policy.**

**10. Mutual Insurance Society—Faculty of Procurators—Member—Contributor to Widows' Fund—Expulsion from Society—Right to continue Contributor—Glasgow Faculty of Procurators Widows' Fund Act, 1833 (3 & 4 Will. 4, c. lxiv).**—Upon the true construction of the statute regulating the Insurance Society of Glasgow Procurators, known as the "Widows' Fund," a member of the faculty in Glasgow, who has duly contributed to the fund, does not cease to be entitled to contribute to the fund and to share in its benefits merely because he is expelled from the faculty.

Decision of the First Division of the Ct. of Sess. ((1904) 7 F. 345; 42 Sc. L. R. 271) reversed by Loreburn, L. C., Lord Macnaghten, Lord James of Hereford, and Lord Atkinson, the Earl of Halsbury, Lord Robertson, and Lord Collins dissenting.

**COLQUHOUN AND OTHERS v. WIDOWS' FUND**  
[OF THE FACULTY OF PROCURATORS IN  
GLASGOW, [1908] A. C. 182; [1908] S. C.  
(H. L.) 10; 45 Sc. L. R. 454; 77 L. J. P. C.  
47; 98 L. T. 764; 24 T. L. R. 438—H. L.]

**11. Proposal and Declaration—Policy Indisputable after Two Years.**—The prospectus of a life insurance company contained a statement that after a policy had been continuously in force for two years without lapse it was indisputable in the absence of fraud and no *bonâ fide* mistakes which had crept into the form of application would prejudice the validity of the policy. An applicant for a policy made two misstatements *bonâ fide* in the application form which was signed by her and the answers in which were made the basis of the contract. By a clause in the conditions in the policy "this policy, except as provided herein, will be indisputable from any cause (except fraud) after it shall have been continuously in force for two years." The assured died after the policy had been in force for more than two years.

**HELD**—that, there being no fraud, the policy was indisputable, and the sum insured was recoverable.



**Life—Continued.**

Decision of Bray, J. (99 L. T. 16; 24 T. L. R. 594) affirmed.

ANSTEY v. THE BRITISH NATURAL PREMIUM [LIFE ASSOCIATION, LD., 24 T. L. R. 871—  
[C. A.]

**(d) Jurisdiction of Justices.**

[No paragraphs in this vol. of the Digest.]

**(e) Practice.**

[No paragraphs in this vol. of the Digest.]

**(f) Transfer, Mortgage, and Alteration of Rights.**

See No. 6, *supra*.

**(g) Miscellaneous.**

12. *Life Assurance Company—Deposit—Amalgamation—Repayment of Deposit—Life Assurance Companies Act, 1870* (33 & 34 Vict. c. 61), s. 3.]—A deposit made by an insurance company in conformity with the Life Assurance Companies Act, 1870, s. 3, may be paid out to their assignees after dissolution of the depositing company, in the absence of any claim against that company, notwithstanding there has been no accumulation as in that section provided.

IN RE UNITED PROVIDENT ASSURANCE CO. [AND IN RE POPULAR LIFE ASSURANCE CO., 25 T. L. R. 58; 53 Sol. Jo. 47; [1908] W. N. 222—Warrington, J.]

**V. MARINE.****(a) Brokers' Rights and Liabilities.**

See No. 16, *infra*.

**(b) Collision.**

[No paragraphs in this vol. of the Digest.]

**(c) Concealment.**

[No paragraphs in this vol. of the Digest.]

**(d) Construction.**

13. *Damage to Hull or Machinery—Latent Defect in Machinery.*]—A policy of marine insurance on ship for a year, while in port at San Francisco, contained a clause that the insurance was also "specially to cover loss of and/or damage to hull or machinery through the negligence of the master, mariners, engineers, or pilots, or through explosions howsoever and wheresoever occurring, bursting of boilers, breakage of shafts, or through any latent defect in the machinery or hull, provided such loss or damage has not resulted from want of due diligence by the owners of the vessel, or any of them, or by the manager." During the year covered by the policy the ship, on arriving back from a voyage, was docked at San Francisco for a Lloyd's survey, and upon the tail shaft being drawn and examined a crack or fracture was discovered in it, and it was condemned. The fracture was caused by a new end having been imperfectly welded on to the shaft many years before, and this latent defect was not visible on the surface in the form of a crack at the previous Lloyd's survey, made about two-and-a-half years before.

HELD—that there was no evidence of any loss through a latent defect during the time when the policy attached—that was to say, while the ship was in port in San Francisco—the policy not covering the mere discovery of a latent defect at San Francisco.

Per Fletcher Moulton, L. J.—The policy upon its true construction did not cover a latent defect in the machinery unless such defect caused actual loss of or actual damage to the machinery, and the mere wearing out of the machinery owing to a latent defect was not within the policy.

Per Buckley, L. J.—The policy covered a latent defect in the machinery, which became apparent on the surface and was discovered during the currency of the policy, and which caused its condemnation.

Decision of Walton, J. ([1906], 95 L. T. 607; 22 T. L. R. 527; 11 Com. Cas. 179; 10 Asp. M. C. 303) affirmed.

OCEANIC STEAMSHIP CO. v. FABER, 97 L. T. [466; 23 T. L. R. 673; 13 Com. Cas. 28; 10 Asp. M. C. 515—C. A.]

14. *Sale of Cattle on c.i.f. Terms—Insurance to be Against "All Risks"—Policy with Clause "Warranted Free of Capture, Seizure, and Detention"—Cattle Not Landed in Consequence of Government Prohibition—Loss.*]—The plaintiffs purchased cattle from the defendant on c.i.f. terms, the terms as to insurance in the contract being that it was to be "against all risks." The defendant delivered to the plaintiffs a policy commonly known as an "all risks" policy, but which (as is usual in such policies) contained the clause "warranted free of capture, seizure, and detention, and the consequences thereof."

HELD—that the policy containing that clause (although as between an insurance broker and underwriters its insertion was usual in an "all risks" policy) did not comply with the terms of the contract of sale, and therefore that the defendant was liable for loss occurring to the plaintiffs by reason of the cattle not being allowed to be landed and having to be slaughtered owing to a Government prohibition.

Decision of Channell, J. ([1907] 1 K. B. 685; 76 L. J. K. B. 469; 96 L. T. 842; 23 T. L. R. 247; 12 Com. Cas. 196; 10 Asp. M. C. 453) affirmed.

YUILL & CO. v. SCOTT-ROBSON, [1908] 1 K. B. [270; 77 L. J. K. B. 259; 98 L. T. 364; 24 T. L. R. 180; 13 Com. Cas. 166; 52 Sol. Jo. 192—C. A.]

15. *"Whilst at Port or Ports, Place or Places in New Caledonia"—Vessel Lost on Reef near New Caledonia.*]—The defendants reinsured the plaintiffs in respect of a vessel "whilst at port or ports, place or places in New Caledonia." The vessel was damaged by striking on a reef in Gazelle Passage, which is a passage through the barrier reef of New Caledonia, distant about ten miles from the mainland.

HELD—that the loss did not occur, within the meaning of the policy, at a "port or ports, place or places in New Caledonia." The word "place"



**Marine—Continued.**

in the collocation "port or ports, place or places" means some place at which the vessel has arrived for some purpose (*e.g.*, for loading, discharging, coaling, repairs, or shelter), and not a place where the vessel may happen to be in passing.

**THE MARITIME INSURANCE CO., LD. v. THE ALIANZA INSURANCE CO. OF SANTANDER,** [1907] 2 K. B. 660; 77 L. J. K. B. 69; 97 L. T. 606; 23 T. L. R. 703; 13 Com. Cas. 46; 10 Asp. M. C. 579—Walton, J.

**(e) Damages and Contribution.**

[No paragraphs in this vol. of the Digest.]

**(f) Freight and Cargo.**

**16. Total Loss — Commission for Getting Charter—Deduction for Hire of Ship.**—Time charterers of a ship insured the freight against the usual perils. During the currency of the policy the ship was stranded, and there was a total loss of freight. The charterers claimed that in ascertaining the amount recoverable they were entitled (1) to add the commission for getting the charter; and (2) to deduct two days' hire of the ship, as it would have taken two days to discharge the cargo on board.

**HELD**—that in the absence of evidence of a practice to include the commission the charterers were not entitled to it, and that the underwriters were not entitled to deduct the two days' hire.

*Forbes v. Aspinall* ((1811), 13 East, 323) discussed.

Whether an assured is owner or charterer, a loss in an open policy on freight must be adjusted on the gross amount of freight.

*Palmer v. Blackburn* ((1822), 1 Bing. 61) applied.

**THE UNITED STATES SHIPPING CO. v. THE EMPRESS ASSURANCE CORPORATION, LD.,** [1907] 1 K. B. 259; 76 L. J. K. B. 225; 23 T. L. R. 137; 12 Com. Cas. 142—Channell, J.

Affirmed on the facts, [1908] 1 K. B. 115; 77 L. J. K. B. 120; 24 T. L. R. 45; 13 Com. Cas. 90—C. A.

**(g) General Average.**

**17. Fire in Cargo of Coal—Damage by Water in Extinguishing—Liability of Ship to Contribute—Rights of Owner of Coal—Inherent Vice of Cargo Shipped by Him—"Portions of Bulk Cargo"—York-Antwerp Rules, 1890, r. 3—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 502.**—Sect. 502 of the Merchant Shipping Act, 1894, which protects a shipowner in respect of loss or damage to goods on board happening "without his actual fault or privity" from fire, has no application to general average contributions; and where a fire occurs in a cargo and other parts of the cargo are damaged in extinguishing the fire, the ship is liable to contribute.

*Schmidt v. Royal Mail Steamship Co.* ((1876), 45 L. J. Q. B. 646) followed.

The words in r. 3 of the York-Antwerp Rules, which provide that, when damage is done in extinguishing fire, no compensation shall be paid in respect of "such portions of the bulk cargo as have been on fire" do not refer to the division of the cargo by bulkheads. Bulk cargo which has not been ignited is entitled to compensation, though it was loaded in the same hold as other parts of the same cargo which did take fire.

Where part of a cargo has been burnt, and part injured in extinguishing the fire, the cargo owner is not precluded from claiming general average contribution merely because his cargo was liable to take fire, unless his conduct in shipping such cargo was wrongful or negligent.

**GREENSHIELDS, COWIE & CO. v. STEPHENS AND [SONS,** [1908] 1 K. B. 51; 77 L. J. K. B. 124; 98 L. T. 89; 52 Sol. Jo. 727; 13 Com. Cas. 91; 10 Asp. M. C. 597—C. A.

Affirmed, [1908] A. C. 431; 77 L. J. K. B. 985; 99 L. T. 597; 24 T. L. R. 880—H. L.

**18. Ship Damaged by Perils of Sea—Putting into Port for Repairs—Unloading and Transshipping Cargo—Damage to Cargo—General Average Contribution.**—Where a ship sustains a particular average loss from perils of the sea or navigation, and the ship puts into port, not for the purpose of preserving the ship and cargo, but for the purpose of effecting repairs so as to enable her to prosecute her voyage, and it is necessary, in order to effect the repairs to the ship, to discharge the cargo, and the cargo is damaged while being discharged, the discharge of the cargo is not a general average act, the discharge not being necessary to save the whole venture from a common peril.

If the unloading of the cargo is necessary for the common preservation of both ship and cargo, it is in itself a general average sacrifice, or it may be properly included as a subject-matter of contribution if the expenditure is directly caused by some antecedent act of general average sacrifice.

**HAMEL AND HORLEY v. THE PENINSULAR AND [ORIENTAL STEAM NAVIGATION COMPANY,** [1908] 2 K. B. 299; 77 L. J. K. B. 637; 98 L. T. 861; 24 T. L. R. 535; 13 Com. Cas. 270—Lord Alverstone, C. J.

**(h) Insurable Interest.**

[No paragraphs in this vol. of the Digest.]

**(i) Mortgages and Assignments.**

[No paragraphs in this vol. of the Digest.]

**(j) Practice.**

[No paragraphs in this vol. of the Digest.]

**(k) Risk: Nature, Duration, Change, etc.**

**19. Return of Premium—Transfer of Ship to "New Management"—Ship Carrying Contraband of War—Seizure by Belligerent—Condemnation by Prize Court.**—A time policy on ship contained a clause that "should the vessel be sold or transferred to new management, then unless the underwriters agree in writing to such

**Marine—Continued.**

sale or transfer this policy shall thereupon become cancelled from date of sale or transfer unless the vessel has cargo on board and has already sailed from her loading port or is at sea in ballast, in either of which cases such cancellation clause shall be suspended until arrival at final port of discharge if with cargo, or at port of destination if in ballast. A *pro rata* daily return of premiums to be made." The policy contained a warranty free of capture, seizure, and detention, and the consequences thereof, or any attempt thereat, piracy excepted, and also from all consequences of hostilities or warlike operations. The ship was, during the currency of the policy, seized by the Japanese during the war with Russia while she was on a voyage to Vladivostock with coal, and was taken to a Japanese port, and there condemned by a prize court. The shipowner claimed a *pro rata* return of the premium upon the ground that the ship had by her seizure and condemnation been "transferred to new management" within the meaning of the policy.

HELD—that the capture and condemnation of the ship was not a transfer to new management, and that, therefore, the shipowner was not entitled to recover.

*Semble*, the ship was not lost by "capture" within the meaning of the warranty.

Decision of Phillimore, J. (22 T. L. R. 834) affirmed.

PYMAN *v.* MARTIN, 24 T. L. R. 10; 13 Com. [Cas. 64—C. A.]

**(1) Seaworthiness.**

[No paragraphs in this vol. of the Digest.]

**(m) Subrogation.**

20. *Reinsurance — Enforcement of Right diminishing Insurer's Loss—Right of Subrogation—Deduction by Insurer of Costs of Enforcing Right.*—The plaintiffs reinsured the defendants in respect of two vessels—*The Riverside* and *The Zebina Goudy*. The defendants had given an open cover slip to B. & Co., under which the latter could declare interests by a number of vessels, but were not at liberty to declare interests by vessels belonging to a firm of T. & Co. The two named vessels belonged to T. & Co., and the shipments were put forward by B. & Co. and accepted, and losses in respect of them settled, by the defendants without knowing that the vessels were T. & Co.'s. The defendants then claimed and were paid by the plaintiffs the losses on these two vessels. Subsequently, on discovering the facts, the defendants sued B. & Co., claiming, *inter alia*, damages for having been induced to pay losses on the two vessels by fraudulent representations of some one in B. & Co.'s employment; and the defendants recovered from B. & Co. in that action the amount they had paid on the two ships. The plaintiffs thereupon claimed to be repaid by the defendants the sum paid to them upon the reinsurance of shipments on the two vessels.

HELD—that the plaintiffs were entitled to recover, inasmuch as the money received by the

defendants as damages in their action against B. & Co. was received by reason of the enforcement of a right which diminished the defendants' loss.

*Dicta* of Brett, L. J., and Bowen, L. J., in *Castellain v. Preston* ((1883), 11 Q. B. D. 380; 52 L. J. Q. B. 366; 49 L. T. 29; 31 W. R. 559—C. A.) applied.

HELD FURTHER—that the defendants were entitled to deduct from the plaintiffs' claim the costs properly attributable to the recovery of the damages from B. & Co.

*Hatch, Mansfield & Co. v. Weingott* ((1905), 22 T. L. R. 366—Jelf, J.) followed.

ASSICURAZIONI GENERALI DE TRIESTE *v.* [EMPRESS ASSURANCE CORPORATION, LD., [1907] 2 K. B. 814; 76 L. J. K. B. 980; 97 L. T. 785; 23 T. L. R. 700; 13 Com. Cas. 37; 10 Asp. M. C. 577—Pickford, J.]

21. *Sellers of Cargo not Paid at Time of Loss—Subsequent Payment by Buyers—Buyers Paid Amount of Insurance—Right of Sellers to Sue Ship—Right of Undertakers to Recover in Sellers' Name—Subrogation.*—Goods were sold by merchants abroad to merchants in England in pursuance of a c.i.f. contract, and the sellers sent the shipping documents to the buyers, reserving, however, the right over them until the buyers stated whether they elected to accept the enclosed bills or to pay cash less discount. The bills of lading were taken in the name of the sellers' agents. The goods were damaged on the voyage by a collision, and on the same day the buyers wrote to the sellers' agents enclosing a cheque in payment for the goods. The buyers brought an action against the owners of the other colliding ship to recover for the damage; the sellers were subsequently added as co-plaintiffs, on the ground that the property had never passed to the buyers, and the ship was held to blame. In the meantime the underwriters, with whom the sellers had effected a policy on the goods, paid the buyers as for a total loss. Upon the assessment of damages the Judge held that, as the sellers had not suffered any damage, they were not entitled to recover anything.

HELD—that the sellers were entitled to recover the amount of the loss on behalf of the underwriters.

THE CHARLOTTE, [1908] P. 206; 77 L. J. P. [132; 99 L. T. 380; 24 T. L. R. 416—C. A.]

**(n) Time Policies and Valued Policies.**

22. *Valued Policy—Owners Part Insurers—Total Loss—Payment by Insurers Under a Valued Policy—Recovery from Wrongdoer of Less than Agreed Policy Value—Division of Amount Recovered between Owners and Insurers.*—

A sailing vessel sunk by a collision had been insured with a mutual insurance association for £1,000 under a valued policy, the value of the vessel being agreed at £1,350. The evidence obtainable at the time of the collision was insufficient to justify an action being brought against anyone. The insurance association first



**Marine—Continued.**

paid £500 to the owners in respect of the loss, and then, settling for a total loss, paid a further £500. Ultimately sufficient evidence was collected to justify an action being brought against the owners of a steamship to recover the damage caused by the collision.

The owners of the steamship admitted liability, subject to the damages being assessed by the registrar and merchants. The registrar assessed the value of the sailing ship at the time of the collision at £1,000, and that amount was paid into Court by the defendants in the damage action. The owners of the sailing vessel then issued a summons asking for an order that the money paid into Court in respect of the value of the hull should be paid out to them and the insurance association in the proportions of  $\frac{350}{350}$  and  $\frac{1000}{1000}$  respectively, on the ground that, as they were their own insurers to the extent of £350 on an agreed value of £1,350, they were entitled to participate in any salvage recovered from the wrongdoer, and they also claimed the same share in the interest paid into Court by the wrongdoer in respect of the value of the hull.

HELD—that the owners of the sailing vessel, being in part their own insurers, were entitled to participate in the salvage recovered from the wrongdoer in the proportions claimed by them.

HELD FURTHER—that the owners of the sailing vessel were also entitled to the same share in the interest paid into Court in respect of the value of the hull.

Decision of Deane, J. (22 T. L. R. 475) affirmed with a variation.

THE COMMONWEALTH (OR THE WELSH GIRL),  
[[1907] P. 216; 76 L. J. P. 106; 97 L. T. 625;  
23 T. L. R. 420; 10 Asp. M. C. 538—C. A.

**(c) Total Loss and Constructive Total Loss.**

**23. Constructive Total Loss—Valuation—Taking Wreck into Account.**—In ascertaining whether a badly damaged ship is a constructive total loss the value of the wreck ought to be taken into account and added to the estimated cost of repairs.

*Angel v. Merchants' Marine Insurance Co.* ([1903] 1 K. B. 811; 72 L. J. K. B. 498; 88 L. T. 717; 51 W. R. 530; 19 T. L. R. 395; 8 Com. Cas. 179—C. A.) overruled.

MACBETH & CO., LD. v. MARITIME INSURANCE Co., LD., [1908] A. C. 144; 77 L. J. K. B. 498; 98 L. T. 594; 24 T. L. R. 403; 13 Com. Cas. 222—H. L.

**(p) Warranty.**

**24.—“Contraband of War” — Warranty against—Contraband Persons not Included.**—*Primâ facie*, the term “contraband of war” applies to goods only and not to persons, and a warranty against “contraband of war” in a marine insurance policy on a neutral ship is not broken by the ship carrying officers belonging to one of the belligerent nations.

Decision of Bigham, J. ([1908] 1 K. B. 910;

77 L. J. K. B. 392; 24 T. L. R. 381; 52 Sol. Jo. 315) affirmed.

YANGTZE INSURANCE ASSOCIATION v. INDEMNITY MUTUAL MARINE ASSURANCE Co., [1908] 2 K. B. 504; 77 L. J. K. B. 995; 99 L. T. 498; 24 T. L. R. 687; 52 Sol. Jo. 550; 13 Com. Cas. 283—C. A.

**25. Warranted Free from Capture, except Piracy—Organized Expedition to Establish Government—Open Cover—Material Facts—Disclosure—Concealment.**—A policy of insurance on goods on a voyage from Para, at the mouth of the river Amazon, to Puerto Alonzo and places on the river Acre, which flowed into a tributary of the Amazon, contained a clause “warranted free from capture, seizure, and detention . . . piracy excepted.” The goods were provisions and stores which were shipped by the Bolivian Government for their troops who were in the district of El Acre for the purpose of resisting an organised expedition which was seeking to overthrow the Bolivian Government in that district and to establish a Government of their own. The organisers of the expedition thereupon fitted out two ships with arms for the purpose of intercepting the vessel carrying the provisions and stores, and they stopped the vessel in the river Acre and seized the goods. In an action on the policy:—

HELD—that this was not a loss by piracy within the meaning of the exception in the policy.

Where an open cover is initialled under which the goods of various persons are subsequently declared, any material fact existing at the time when the goods are declared must be communicated to the underwriters, though that fact may not be in existence at the time when the cover is initialled.

REPUBLIC OF BOLIVIA v. THE INDEMNITY [MUTUAL MARINE ASSURANCE Co., LD., 99 L. T. 394; 24 T. L. R. 724—Pickford, J.

**26. “Warranted Free from Capture”—Loss of Ship after Capture by Perils of the Sea—Subsequent Condemnation by Prize Court—Relation Back.**—A policy of marine insurance contained a clause, “warranted free from capture.” The ship was, during the policy, captured by a Japanese cruiser at the time of the Russo-Japanese war, and while being taken to a Japanese port where a prize court was held she was lost by a peril of the sea. The ship was subsequently condemned by the prize court. In an action on the policy:—

HELD—that the owner lost his ship “by capture” and could not recover on the policy, and that it was unnecessary to decide whether in the case of a neutral vessel condemnation by a prize court relates back to the date of seizure, as it does in the case of a hostile vessel.

Decision of Channell, J. ([1907] 2 K. B. 248; 76 L. J. K. B. 674; 23 T. L. R. 534; 12 Com. Cas. 309; 10 Asp. M. C. 494) affirmed.

ANDERSON v. MARTEN, [1908] 1 K. B. 601; 77 [L. J. K. B. 569; 98 L. T. 146; 24 T. L. R.



**Marine—Continued.**

208 ; 13 Com. Cas. 205 ; 10 Asp. M. C. 605—  
C. A.

Affirmed, [1908] A. C. 334 ; 77 L. J. K. B.  
950 ; 99 L. T. 254 ; 24 T. L. R. 775 ; 52 Sol. Jo.  
680 ; 13 Com. Cas. 321—H. L.

**INTEREST.**

See BANKRUPTCY ; COMPANIES ; CON-  
TRACTS ; MONEY ; PRACTICE AND  
PROCEDURE.

**INTERNATIONAL LAW.**

See ALIENS ; CONFLICT OF LAWS.

**INTERPLEADER.**

See BANKRUPTCY ; BILLS OF SALE ;  
COURT ; EXECUTION.

**INTERPRETATION OF  
DOCUMENT.**

See DEEDS AND DOCUMENTS.

**INTERPRETATION OF  
STATUTES.**

See STATUTES.

**INTERPRETATION OF  
WILLS.**

See WILLS.

**INTERROGATORIES.**

See DISCOVERY.

**INTESTACY.**

See DESCENT AND DISTRIBUTION.

**INTOXICATING LIQUORS.**

	COL.
I. APPLICATIONS FOR NEW LICENCES .	320
[No paragraphs in this vol. of the Digest.]	
II. RENEWAL OF LICENCES.	
(a) Jurisdiction and Procedure .	320
(b) Compensation on Refusal .	321
III. TRANSFERS AND REMOVALS .	321
IV. OFFENCES.	
(a) Refusal to Leave Licensed Premises . . . . .	322
[No paragraphs in this vol. of the Digest.]	
(b) Sale by Unlicensed Person .	322
(c) Sale at Unlicensed Place .	323
[No paragraphs in this vol. of the Digest.]	
(d) Selling or Keeping Open during Prohibited Hours .	323
[No paragraphs in this vol. of the Digest.]	
(e) Miscellaneous Offences .	323
V. SALE TO CHILDREN . . . . .	324
VI. HABITUAL DRUNKARDS . . . . .	325
VII. MISCELLANEOUS . . . . .	325
And see GAMING, No. 13 ; LANDLORD AND TENANT.	

I. APPLICATIONS FOR NEW LICENCES.	
[No paragraphs in this vol. of the Digest.]	
II. RENEWAL OF LICENCES.	
(a) Jurisdiction and Procedure.	

1. *Grounds for Refusal—Premises Ill-con-  
ducted—Meaning of—Licensing Act, 1904* (4  
Edw. 7, c. 23), s. 1.]—The licensee of certain  
premises was a dummy under a bogus agreement,  
and the whole of the profits were taken by a per-  
son who was not the licensee. The premises  
were, however, conducted without complaint or  
conviction for ten years, and the brewers, who  
held a mortgage on the premises, were ignorant  
of the arrangement.

HELD—that the premises had been ill-con-  
ducted within the meaning of sect. 1 of the  
Licensing Act, 1904.

MOORE v. TOWER JJ., 72 J. P. 215—Qr. Sess.

2. *Report by Justices of Licensing District—  
Consideration of Question of Renewal by County  
Licensing Committee—Evidence of Matters Out-  
side Report—Licensing Act, 1904* (4 Edw. 7, c. 23),  
s. 1 (2).]—Where the justices of a licensing  
district refer to Quarter Sessions the question of  
the renewal of an existing on-licence under sect.  
1 (2) of the Licensing Act, 1904, Quarter Sessions  
are entitled, for the purpose of differentiation, to  
consider evidence as to structural condition and  
state of repair, although no mention of such  
matters is contained in the justices' report.

Decision of Div. Ct. ([1907] 2 K. B. 340 ; 76

**Renewal of Licences—Continued.**

L. J. K. B. 718; 71 J. P. 242; 96 L. T. 701; 23 T. L. R. 474) affirmed.

HOWE v. NEWINGTON JJ., [1908] 1 K. B. 260; [77 L. J. K. B. 263; 72 J. P. 2; 98 L. T. 79; 24 T. L. R. 174—C. A.

**(b) Compensation on Refusal.**

3. *Basis of Compensation for Non-renewal of a Licence—Licensing Act, 1904* (4 Edw. 7, c. 23), s. 2.]—Judicial discussion of the facts to be taken into consideration in ascertaining the amount of compensation payable under the provisions of the Licensing Act, 1904.

IN RE LASSELLS AND SHARMAN, LD., "THE FREEMASONS' ARMS," 72 J. P. 323; 52 Sol. Jo. 534—Bray, J.

4. *Basis of Compensation for Refused Licence—Division of Compensation between Parties Interested—Basis of Apportionment—Reference of Apportionment to County Court—Appeal—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 120—*Licensing Act, 1904* (4 Edw. 7, c. 23), s. 2 (1), (2), (3).]—The question of the division of an amount of compensation between the parties interested in a licence having been referred by Quarter Sessions to a county court under sect. 2 (3) of the Licensing Act, 1904, the county court Judge took into consideration the nature of the interest in the premises, the vicissitudes to which it was subject, the age and character of the house, and the fact that the lessees were under no obligation under their lease to maintain the licence or to surrender the premises with a licence, and came to the conclusion that the sum divisible between the lessors and lessees should be apportioned upon the 8 per cent. interest tables.

HELD—that there was no rule or presumption of law as to the table to be taken, and the decision of the county court Judge as to the division of the amount was a decision of fact from which no appeal lay to the High Court.

*Quære*, whether an appeal lies to the High Court from the decision of a county court Judge upon a reference to him by Quarter Sessions of a question as to the division of compensation under sect. 2 (3) of the Licensing Act, 1904.

Decision of Div. Ct. ([1908] 1 K. B. 28; 77 L. J. K. B. 46; 71 J. P. 524; 97 L. T. 764) reversed.

LIVERPOOL CORPORATION v. PETER WALKER (AND SON, LD.), [1908] 2 K. B. 33; 77 L. J. K. B. 700; 72 J. P. 233; 99 L. T. 231; 24 T. L. R. 443—C. A.

**III. TRANSFERS AND REMOVALS.**

5. *Notices—Closed Licensed Premises—Yielding up Possession—New Tenant—Application for Licence—Requisite Notices—Alehouse Act, 1828* (9 Geo. 4, c. 61), s. 14—*Licensing Act, 1872* (35 & 36 Vict. c. 94), s. 40 (2)—*Licensing Act, 1902* (2 Edw. 7, c. 28), s. 16 (3).]—The licensee of licensed premises which had been closed for some years, having removed from and yielded up possession of the licensed premises before the expiry of his

Y.D.

licence on April 5th, 1907, application was made on February 21st, 1908, under sect. 14 of the Alehouse Act, 1828, at an adjournment of the general annual licensing meeting for 1908, for a grant of a licence to one Henry Mortimer. No notice of the intended application had been given as prescribed by the proviso to that section, but notice in the usual form had been given pursuant to sect. 40 (2) of the Licensing Act, 1872. The application was opposed on the ground that the notices prescribed by the proviso to sect. 14 of the Alehouse Act, 1828, were necessary, as application was being made for a licence for premises in which exciseable liquors had not been sold to be consumed on the premises by virtue of a licence granted at the general annual licensing meeting next before the special session of February 21st, 1908. The licensing justices, at an adjourned meeting on February 28th, 1908, decided that the notices given were sufficient, and granted the licence applied for, which would run till April 5th, 1908, and also granted a renewal thereof until April 5th, 1909.

HELD—that the notices given were sufficient. R. v. BATH JJ., 72 J. P. 356; 99 L. T. 54—[Div. Ct.

6. *Order for Structural Alterations—Power to Make—Licensing Act, 1902* (2 Edw. 7, c. 28), s. 11 (4).]—Sect. 11 (4) of the Licensing Act, 1902, which empowers justices on the application for the renewal of a licence to order structural alterations, gives no authority to make such an order on an application for a transfer at special transfer sessions.

R. v. MERIONETHSHIRE JJ. 72 J. P. 389; 99 [L. T. 89—Div. Ct.

**IV. OFFENCES.****(a) Refusing to Leave Licensed Premises.**

[No paragraphs in this vol. of the Digest.]

**(b) Sale by Unlicensed Person.**

7. *Sale by Persons Unlicensed through a Dummy Licensed Person Residing on the Licensed Premises—Licensing Act, 1872* (35 & 36 Vict. c. 94), s. 3.]—The respondents were summoned for selling intoxicating liquor without a licence. It appeared that a licence had been granted to the respondent N. The respondents D. and his wife, however, found the capital of the business, and were in control of the premises and served behind the bar, and the beer was sent by the brewers to them. N. resided on the premises but was never behind the bar, and was treated as a servant or dependant. The magistrate stopped the case at the close of the evidence for the prosecution, and held that he could not convict, as there was an existing licence and the licensee was resident.

HELD—that an offence would be committed if unlicensed persons were to sell their own liquor under the cloak of the licence of a person whose liquor they were not selling, and that such persons could not protect themselves by showing that a dummy licensee was resident on the premises where the liquor was sold, and that the case must therefore be remitted to the

**Offences—Continued.**

magistrate to be further heard and determined by him.

PECKOVER *v.* DEFRIES AND OTHERS, 71 J. P. 38; [95 L. T. 883; 23 T. L. R. 20; 21 Cox, C. C. 323—Div. Ct.]

**8. Dummy Licensee—Real Seller Unlicensed—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 3.]** The respondent, who was not a licensed person, contracted to supply intoxicating liquor at an exhibition, and by arrangement with him a licensed person obtained an occasional licence for the sale of intoxicating liquor at the exhibition. Beer sent to the exhibition by order of the respondent, and paid for by him, was sold there by barmaids who were paid by the respondent. The licensed person was in the control of the bar and the serving staff, but was not remunerated for his services in any way. The proceeds were put in the till and afterwards taken away by an employee of the respondent.

HELD—that proof of these facts was proof of an offence by the respondent against sect. 3 of the Licensing Act, 1872, as he was the real seller, and he was therefore selling by an agent intoxicating liquor which he was not licensed to sell.

DUNNING *v.* OWEN, [1907] 2 K. B. 237; 76 [L. J. K. B. 796; 71 J. P. 383; 97 L. T. 241; 23 T. L. R. 494; 21 Cox, C. C. 485—Div. Ct.]

See also No. 1, *supra*.

**(c) Sale at Unlicensed Place.**

[No paragraphs in this vol. of the Digest.]

**(d) Selling or Keeping Open during Prohibited Hours.**

[No paragraphs in this vol. of the Digest.]

**(e) Miscellaneous Offences.**

**9. "Long Pull"—Sale in Marked Measure—Customer's Jug—Presence of Customer—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 8.]**—The appellant, who was the holder of an off-licence for the sale of beer, was handed a jug by a customer and was asked for a pint of beer. In the presence of the customer he took a half-pint imperial measure, filled it twice and poured the beer into the jug and then pumped an additional quantity of beer into the jug. The appellant then handed the jug of beer to the customer, who paid for a pint of beer.

HELD—that the use of the half-pint instead of a pint measure did not constitute any offence, that as the beer was measured and transferred into the jug in the presence of the customer, the sale was a sale by imperial measure as required by sect. 8 of the Licensing Act, 1872, and that as the customer paid for a pint of beer the addition of extra beer beyond the measured pint was not an offence.

ADDY *v.* BLAKE ((1887) 19 Q. B. 478; 51 J. P. 599; 56 L. T. 711; 35 W. R. 719; 16 Cox, C. C. 259) distinguished.

PENNINGTON *v.* PINCOCK, [1908] 2 K. B. 244; [77 L. J. K. B. 537; 72 J. P. 199; 98 L. T. 804; 24 T. L. R. 509; 6 L. G. R. 830; 52 Sol. Jo. 413—Div. Ct.]

**10. Permitting Drunkenness—Lodger—Admission in a State of Intoxication—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 13—Licensing Act, 1902 (2 Edw. 7, c. 28), s. 4.]**—The appellant was a licensed hotel-keeper at C. A man entered the hotel at 10.30 p.m. on a Sunday in a state of intoxication, and his condition was observed by the appellant's manager, who accepted him as a lodger and allowed him to go to the smoking room, where two police officers found him in a state of intoxication at 11.30 p.m. In C. premises licensed for the sale of intoxicating liquors by retail are required by law to be closed during the whole of Sunday except as to *bonâ fide* travellers, persons lodging in the house, and private friends *bonâ fide* entertained by the licence-holder at his own expense.

The appellant was convicted of permitting drunkenness on his licensed premises contrary to sect. 13 of the Licensing Act, 1872.

HELD—that as the appellant was not bound to admit the man in a state of intoxication, the magistrate was entitled to find that the appellant had not discharged the onus of proof cast upon him by sect. 4 of the Licensing Act, 1902, and the conviction must be upheld.

THOMPSON *v.* MCKENZIE, [1908] 1 K. B. 905; [77 L. J. K. B. 605; 72 J. P. 150; 98 L. T. 896; 24 T. L. R. 330; 52 Sol. Jo. 302—Div. Ct.]

**11. Permitting Drunkenness—Private Guests, found Drunk after Closing Hours—Licensing Acts, 1872 (35 & 36 Vict. c. 94), s. 13; and 1902 (2 Edw. 7, c. 28), s. 4.]**—The respondent, the proprietor of a licensed hotel, was charged with permitting drunkenness on the licensed premises. The respondent's wife entertained as private guests on the licensed premises a number of persons after closing hours, and two of these guests, M. and W., were drunk at the time the police visited the premises at 1 a.m. M., before becoming a private guest, had been on the premises as an ordinary customer, but was not then drunk. W. came on to the premises just before closing time and was then drunk.

HELD—that the respondent ought to have been convicted.

LAWSON *v.* EDMINSON, [1908] 2 K. B. 952; 72 [J. P. 479; 25 T. L. R. 11; 53 Sol. Jo. 15—Div. Ct.]

**V. SALE TO CHILDREN.**

**12. Corked and Sealed Vessel—Meaning of "Such as are Sold or Delivered"—Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw. 7, c. 27), s. 2.]**—A publican commits no offence against sect. 2 of the Intoxicating Liquors (Sale to Children) Act, 1901, if, when a child under fourteen years of age is sent with a bottle to his public-house to fetch a pint of beer, his barman puts a pint of beer into the bottle and then corks and seals it before handing it back to the child. The words of the section, "excepting such intoxicating liquors as are sold or delivered in corked and sealed vessels," do not mean such intoxicating liquors as are commonly so sold or delivered.



**Sale to Children—Continued.**

but such intoxicating liquors as are in fact so sold or delivered.

*Farndale v. Dillon* (*infra*) considered.

JONES *v.* SHERVINGTON, [1908] 2 K. B. 539; 77 [L. J. K. B. 771; 72 J. P. 381; 99 L. T. 57; 24 T. L. R. 693; 52 Sol. Jo. 582—Div. Ct.

**13. Sale to Child under Fourteen—Responsibility of Publican for Assistant—Intoxicating Liquors (Sale to Children) Act, 1901** (1 Edw. 7, c. 27), s. 2.—Intoxicating liquor in quantities less than one pint was sold in open vessels to a girl of eleven years of age by a publican's assistant who had means of knowing the age of the child. The sale took place without the publican's presence and actual personal knowledge, but no sufficient instructions had been given by him to his assistant not to supply children under fourteen years of age except as provided by the statute.

**HELD**—that the publican had been rightly convicted of a contravention of the Scotch provision corresponding to sect. 2 of the Intoxicating Liquors (Sale to Children) Act, 1902.

GREIG *v.* MACLEOD, [1908] S. C. (J.) 14—Ct. [of Justy.

**14. Unsealed Bottle—Quantity Less than One Reputed Pint—Intoxicating Liquors (Sale to Children) Act, 1901** (1 Edw. 7, c. 27), s. 2.—Per Darling and Lawrence, J.J.: It is an offence against sect. 2 of the Intoxicating Liquors (Sale to Children) Act, 1901, to send a child under the age of fourteen years to any place where intoxicating liquors are sold or distributed for the purpose of obtaining a pint (or more) of intoxicating liquor unless it is sold in a corked and sealed vessel belonging to and provided by the vendor.

Per Lord Alverstone, C. J.: Possibly it may be sufficient if the purchaser sends the child with a vessel of his own, but proves that he intended it to be corked and sealed by the vendor.

*Semble*, to send a child for less than a pint, though to be delivered in a corked and sealed vessel belonging to the vendor, is an offence.

FARNDALE *v.* DILLON, [1907] 2 K. B. 513; 76 [L. J. K. B. 922; 71 J. P. 374; 97 L. T. 284; 21 Cox, C. C. 500—Div. Ct.

**VI. HABITUAL DRUNKARDS.**

See CRIMINAL LAW, No. 23.

**VII. MISCELLANEOUS**

**15. Occasional Licence—Licence with Condition Attached—Condition that House shall be Open Only During Certain Hours—Power to Grant Occasional Licence for Other Hours—Licensing Act, 1872** (35 & 36 Vict. c. 94), s. 29—*Licensing Act, 1904* (1 Edw. 7, c. 23), s. 4 (2).—A licence was granted in respect of certain premises subject to the condition, imposed under sect. 4 of the Licensing Act, 1904, that the premises should only be open for the sale of intoxicating liquors between the hours of noon and 2 p.m.

The licensee applied for an occasional licence

under sect. 29 of the Licensing Act, 1872, authorising him to keep the premises open from seven to eleven p.m. on a particular day.

**HELD**—that the justices had power to grant the occasional licence.

Decision of Div. Ct. ([1907] 2 K. B. 232; 76 L. J. K. B. 787; 71 J. P. 339; 97 L. T. 179; 23 T. L. R. 501) affirmed.

GROH *v.* HESKETH, [1908] 1 K. B. 654; 77 [L. J. K. B. 481; 72 J. P. 114; 98 L. T. 263; 24 T. L. R. 269; 52 Sol. Jo. 239—C. A.

**INVENTIONS.**

See PATENTS AND INVENTIONS.

**IRISH LAW.**

**1. Landed Estates Court—Land Sold Subject to Jointure but Indemnified by Unsold Lands—Jointure Prior to Incumbrances—Rights of Jointure.**—In 1880 an Irish estate was put up for sale in 51 lots: 29 were sold, and the proceeds applied *pro tanto* in discharging incumbrances. There was a jointure charged upon the lands, but it was *paisne* to the other incumbrances. The purchasers of lots 1—29 bought subject to the jointure but were given an indemnity in respect of it against the unsold lots. In 1906 these lots were sold to the tenants under the Land Purchase Acts.

**HELD**—that the jointureess had priority over the incumbrances on these lots, and the purchasers of the indemnified lots had a similar priority in respect of their indemnity.

*In re Rowe's Estate* ([1907] 1 I. R. 380—C. A.) and *Rowe v. Gough* ([1908] 1 I. R. 402—C. A.) reversed.

ROWE *v.* GOUGH, GOUGH *v.* BOLTON, [1908] [W. N. 249—H. L.

**ISLE OF MAN.**

See DEPENDENCIES AND COLONIES.

**JAMAICA.**

See DEPENDENCIES AND COLONIES.

**JOINT STOCK COMPANIES.**

See COMPANIES AND COMPANY LAW.

**JOINT TENANCY AND TENANCY IN COMMON.**

See PERSONAL PROPERTY; REAL PROPERTY AND CHATTELS REAL.

## JOINTURE.

See HUSBAND AND WIFE ; REAL AND PERSONAL PROPERTY.

## JUDGES.

1. *Disqualification—Members of Privy Council Shareholders in Petitioning Company—Postponement of Hearing.*—This was a petition by the Grand Trunk Railway Company of Canada for special leave to appeal from a judgment of the Supreme Court of Canada. On the petition being called on for hearing before five members of the Judicial Committee, the Lord Chancellor announced that he was a shareholder in the company, and Lord Atkinson and Lord Collins said that they also were shareholders. The Lord Chancellor said that Lord Atkinson, Lord Collins, and himself, would be precluded from hearing the petition unless anyone present on behalf of the respondent waived the objection. The petition being *ex parte*, the respondent was not represented. Consequently the hearing was postponed till later in the day, when the attendance of another member who was not a shareholder was procured to make up the necessary quorum of three.

GRAND TRUNK RY. CO. OF CANADA v. ROBERTSON, *Times*, March 13th, 1908—P. C.

## JUDGMENT.

See also BANKRUPTCY ; CONFLICT OF LAWS, Nos. 4, 5 ; ESTOPPEL ; LIMITATION OF ACTION ; PLEADINGS ; PRACTICE AND PROCEDURE.

1. *Amendment—Accidental Slip—Claim for Liquidated Amount—Default of Appearance—Fixed Sum for Costs—Judgment Signed for Excessive Amount—Right to Set Aside Judgment—Ord. 13, r. 3 ; Ord. 28, r. 11.*—In an action on a specially endorsed writ, issued out of a district registry, to recover a sum exceeding £100, the defendant did not enter an appearance, and the plaintiff became entitled to sign judgment for the amount claimed and costs. In such cases the practice Masters had, instead of requiring the costs to be taxed, fixed certain costs as payable, the amount depending upon whether the writ of summons was served (in this particular case) within or beyond two miles from the district registry. A list of these costs was posted up in the registry. The clerk to the plaintiff's solicitors went to the registry for the purpose of signing judgment, and he inadvertently entered in the form of judgment the larger sum for costs, whereas the smaller sum was the right figure, the writ having been served within two miles from the registry. The clerk then handed in the judgment to the registry office, and the clerk there impressed the seal of the Court upon it. The plaintiff having issued execution on the judgment, the defendant took out a summons to have it set aside upon the ground that it was

irregular and bad, inasmuch as it had been entered for an amount in excess of that actually due. The plaintiff upon the hearing of that summons applied to have the judgment amended by inserting the smaller sum for costs.

HELD (Fletcher Moulton, L. J., dissenting)—that there had been an error arising from an accidental slip within the meaning of Ord. 28, r. 11, and the Court had power and ought to amend the judgment.

ARMITAGE v. PARSONS, [1908] 2 K. B. 410 ; 77 [L. J. K. B. 850 ; 99 L. T. 329 ; 24 T. L. R. 685 ; 52 Sol. Jo. 515—C. A.]

2. *Estoppel—Patent Infringement Action—Judgment for Plaintiff and Inquiry as to Damages—Patent Revoked before Inquiry—Estoppel against Estoppel.*]

Per Parker, J. : *Quære* whether there is any rule that an estoppel against an estoppel sets the matter at large.

In a patent infringement action the plaintiff obtained judgment for an injunction and inquiry as to damages. The defendants soon afterwards on fresh evidence of prior user obtained an order revoking the patent.

HELD—that the judgment estopped the defendants from setting up the invalidity of the patent upon the inquiry as to damages.

Decision of Parker, J. (77 L. J. Ch. 586 ; 24 T. L. R. 717) affirmed.

POULTON v. ADJUSTABLE COVER AND BOILER [BLOCK CO., LD., [1908] 2 Ch. 430 ; 77 L. J. Ch. 780 ; 24 T. L. R. 782 ; 52 Sol. Jo. 639—C. A.]

3. *Tort—Joint Tortfeasors—Release of One—Satisfaction and Discharge—Liability of the Other Joint Tortfeasor.*—The plaintiff, who had been advised by one partner in a firm of solicitors, brought an action against him to recover damages for his alleged negligence in giving her advice, and this action was settled on the terms of an agreement under which she received £95 in full satisfaction and discharge of all claims and disputes between the parties. Subsequently the plaintiff sued the other partner in respect of the same matter.

HELD—that the plaintiff was precluded from maintaining the action.

HOWE v. OLIVER, HAYNES, THIRD PARTY, 24 [T. L. R. 781 ; 52 Sol. Jo. 684—Channell, J.]

## JUDGMENT SUMMONS.

See COUNTY COURTS.

## JUDICIAL COMMITTEE.

See COURTS.

**JUDICIAL SEPARATION.***See* HUSBAND AND WIFE.**JURIES.***See* COUNTY COURTS, No. 3 ; CRIMINAL LAW, No. 12 ; PRACTICE AND PROCEDURE.**JURISDICTION.***See* ACTION ; COURTS.**JUS TERTII.***See* PRACTICE AND PROCEDURE.**JUSTICE OF THE PEACE.***See* MAGISTRATES.**JUVENILE OFFENDER.***See* CRIMINAL LAW AND PROCEDURE.**KIDNAPPING.***See* CRIMINAL LAW AND PROCEDURE.**LACHES.***See* EQUITY ; LIMITATION OF ACTIONS ; WAIVER.**LANCASTER PALATINE COURT.***See* COURTS.**LAND.***See* REAL PROPERTY AND CHATTELS REAL ; SALE OF LAND, ETC.**LAND AGENTS.***See* AGENCY ; SALE OF LAND ; VALUERS AND APPRAISERS.**LAND CHARGES.***See* REAL PROPERTY AND CHATTELS REAL ; SALE OF LAND.**LAND CLAUSES CONSOLIDATION ACTS.***See* COMPULSORY PURCHASE AND COMPENSATION.**LAND DRAINAGE ACTS.***See* SEWERS AND DRAINS.**LAND REGISTRY.***See* SALE OF LAND ; REAL PROPERTY AND CHATTELS REAL.**LAND TAX.**

1. *Covenant by Lessor to Pay Land Tax—Building Agreement—Increase in Annual Value of Land—Proportion of Land Tax Payable by Lessor.*—In pursuance of a building agreement the owners of a piece of land granted to a builder, on the completion of a certain house on the land, a lease of the house at a ground rent. By the lease the lessee covenanted to pay the rent and all outgoing except land tax and landlord's property tax, and the lessors covenanted to pay the land tax chargeable on the demised premises. The annual value of the land was increased when the houses were erected on the land.

HELD—that the lessors were only liable to pay the proportion of the land tax based on the rent received by them, and not the land tax payable on the improved annual value of the land.

*Watson v. Home* ((1827), 7 B. & C. 285) and *Smith v. Humble* ((1854), 18 J. P. 760 ; 15 C. B. 321) followed.

*MANSFIELD AND OTHERS v. RELF*, [1908] 1 [K. B. 71 ; 77 L. J. K. B. 145 ; 71 J. P. 556 ; 97 L. T. 745 ; 24 T. L. R. 79—C. A.]

**LAND TRANSFER.***See* REAL PROPERTY AND CHATTELS REAL ; SALE OF LAND.



**LANDLORD AND TENANT.**

	COL.
I. RELATION OF LANDLORD AND TENANT . . . . .	332
II. AGREEMENTS FOR LEASES . . . . .	333
III. ESSENTIALS OF LEASE . . . . .	333
[No paragraphs in this vol. of the Digest.]	
IV. PARCELS OR PREMISES INCLUDED IN THE DEMISE.	
(a) Easements . . . . .	333
[No paragraphs in this vol. of the Digest.]	
(b) Fixtures . . . . .	333
(c) Sporting Rights . . . . .	334
[No paragraphs in this vol. of the Digest.]	
V. DURATION OF TENANCY.	
(a) Notice to Quit . . . . .	334
(b) Renewal . . . . .	335
(c) Tenancy at Will . . . . .	335
[No paragraphs in this vol. of the Digest.]	
(d) Tenancy from Year to Year . . . . .	335
[No paragraphs in this vol. of the Digest.]	
(e) Weekly Tenancy . . . . .	335
[No paragraphs in this vol. of the Digest.]	
(f) Life Tenancy . . . . .	335
VI. RENT . . . . .	336
[No paragraphs in this vol. of the Digest.]	
VII. RESTRICTIVE COVENANTS . . . . .	336
VIII. RATES, TAXES AND OUTGOINGS.	
(a) Charges borne by Lessor . . . . .	336
(b) Factories and Workshops . . . . .	336
[No paragraphs in this vol. of the Digest.]	
(c) Paving Expenses . . . . .	336
[No paragraphs in this vol. of the Digest.]	
(d) Requirements of Sanitary Authority . . . . .	336
[No paragraphs in this vol. of the Digest.]	
IX. REPAIRS, MAINTENANCE AND IMPROVEMENT.	
(a) Alteration . . . . .	336
[No paragraphs in this vol. of the Digest.]	
(b) Building Covenants . . . . .	337
[No paragraphs in this vol. of the Digest.]	
(c) Insurance Covenants . . . . .	337
[No paragraphs in this vol. of the Digest.]	
(d) Liability of Landlord for Non-Repair . . . . .	337
[No paragraphs in this vol. of the Digest.]	
(e) Repairing Covenants . . . . .	337
X. COVENANTS BY LESSOR.	
(a) Restrictive Covenants . . . . .	337
[No paragraphs in this vol. of the Digest.]	
(b) Quiet Enjoyment . . . . .	337
XI. DEROGATION FROM GRANT . . . . .	338
XII. FORFEITURE.	
(a) Notice of Breach of Covenant . . . . .	338
[No paragraphs in this vol. of the Digest.]	
(b) Re-entry . . . . .	338
(c) Relief against Forfeiture . . . . .	339
XIII. DWELLING-HOUSES AND FLATS . . . . .	340

**Landlord and Tenant—Continued.**

	COL.
XIV. LICENSED PREMISES.	
(a) Covenants against Forfeiture of Licence . . . . .	340
[No paragraphs in this vol. of the Digest.]	
(b) Maintenance of Business and Licence . . . . .	340
(c) Tied Houses . . . . .	340
[No paragraphs in this vol. of the Digest.]	
XV. COVENANTS AGAINST ASSIGNING OR UNDERLETTING . . . . .	340
XVI. EFFECT OF ASSIGNMENT ON COVENANTS.	
(a) Assignment of Lease . . . . .	342
(b) Assignment of Reversion . . . . .	342
See also AGRICULTURE; COMPULSORY PURCHASE, Nos. 1, 2; DISTRESS; EXECUTORS, No. 24; MINES AND MINERALS.	

**I. RELATION OF LANDLORD AND TENANT.**

1. *Duty of Landlord—House Let in Separate Tenements—Staircase under Control of Landlord—Duty of Landlord to Light Staircase—Persons Having Business with Tenants.*—The defendant was the owner of a building in a town, the different floors of which he let out to tenants as separate tenements for business purposes. The staircase, which was in the possession and under the control of the defendant, was lighted by gas brackets on the several landings, the gas for the brackets being supplied by the tenants of the various offices, and not by the defendant. It was the practice for each of the tenants to put out his own staircase light each evening when leaving, but they had no agreement whatever with the defendant as to the lighting of the staircase. The plaintiff was a canvasser in the employment of the tenants of a set of offices on the second floor, and late one evening, when all the lights on the staircase had been put out, he descended the stairs, and the staircase being in darkness he went down the stairs leading to the basement, not knowing that he had passed the entrance hall, and opening a door there he fell down and was injured. In an action against the defendant alleging a duty on him to light the staircase :—

**HELD**—that there was no duty on the part of the defendant towards his tenants to light the staircase, and that therefore there was no duty towards the plaintiff to do so, and that the plaintiff was not entitled to recover.

*Miller v. Hancock* ([1893] 2 Q. B. 177; 57 J. P. 758; 69 L. T. 214; 41 W. R. 578—C. A.) discussed.

*HUGGETT v. MIERS*, [1908] 2 K. B. 278; 77 [L. J. K. B. 710; 99 L. T. 326; 24 T. L. R. 582; 52 Sol. Jo. 481—C. A.]

2. *Trustee Disclaiming Lease of Plot of Land—Bankrupt having Mortgaged by Demise Portions of Plot—Order Vesting in Mortgagees Whole Plot Including Portion not Mortgaged—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 55, sub-s. 6.*—The lessee of a plot of land mortgaged by sub-demise four portions of the plot to four

**Relation of Landlord and Tenant—Continued.**

different mortgagees, retaining the remainder of it. He subsequently became bankrupt, and his trustee in bankruptcy disclaimed the lease. A trustee for the four mortgagees (himself a solvent person) applied to a county court Judge for an order vesting in him as such trustee all the rights, interest and title of the bankrupt under the lease, including the portion of the plot not mortgaged, subject to the rent, covenants and conditions contained in the lease. The county court Judge made the order.

HELD—that the order was properly made.

IN RE HOLMES, EX PARTE ASHWORTH, [1908]  
[2 K. B. 812; 52 Sol. Jo. 728—Div. Ct.]

**II. AGREEMENTS FOR LEASES.**

**3. Letter Refusing Lease -- Permission to Stay as Long as Rent is Paid—Not an Agreement for Lease.**—A letter by a lessee of premises to a tenant in possession in the following terms, viz., "Referring to our conversation respecting granting you a lease of the above premises, I have thought the matter over, and do not see my way clear to do so. As far as I am concerned, you are welcome to stay on as my tenant of the above premises as long as you like provided you pay your rent regularly," is not an agreement for a lease, of which specific performance can be granted against the assignees of the lessee.

LONDON COUNTY COUNCIL v. GOODE, *Times*,  
[March 12th, 1908—C. A.]

**III. ESSENTIALS OF LEASE.**

[No paragraphs in this vol. of the Digest.]

**IV. PARCELS OR PREMISES INCLUDED IN THE DEMISE.****(a) Easements.**

[No paragraphs in this vol. of the Digest.]

**(b) Fixtures.**

**4. Covenant to Deliver Premises with Fixtures—What Fixtures—Trade and Tenant's Fixtures—Surrender of Lease—Position of Sub-tenant—Whether Bound by Covenant to Deliver Fixtures.**]

*Semble*, if a tenant surrenders his lease in order that a new lease be granted, he loses his right to remove fixtures, unless he stipulates to the contrary.

In 1907 A. was assignee of a lease of certain premises, 20 years of the term being unexpired; the lease contained a covenant by the lessee to deliver up the premises at the expiration of the term "with all and singular the fixtures and articles belonging thereto." The premises were occupied by W. as a weekly tenant from A., and W. had put up some trade or tenant's fixtures. In June, 1907, the lessors served on A. a notice to repair, and A. in writing made an offer, which they accepted, to surrender the premises at once. W. knew what was going on, but the lessors did not know of his sub-tenancy until July 1st, 1907. The lessors and A. wished to get rid of the sub-tenancy and A. gave to W. a notice to quit on August 19th. By an agreement in writing dated August 7th, W. agreed to become the weekly

tenant of the lessors as from August 12th, but no agreement was entered into with reference to W.'s fixtures. By a deed executed on August 9th, A. surrendered and assigned the demised premises to the lessors, "to the intent that the residue . . . unexpired of the term of years" therein might merge and be extinguished in the freehold. On September 12th, 1907, the lessors served W. with a notice to quit on September 23rd:—

HELD—(1) that the lessee's covenant referred to was binding on W., and was not confined to landlord's fixtures, but extended to tenant's and trade fixtures; (2) that an agreement to surrender precluded the lessee from removing fixtures then upon the demised premises, although they were tenant's or trade fixtures, but would not affect his sub-tenant's right of removal without the consent of the latter, although the exercise of that right might make the lessee unable to complete his contract with the lessor, and therefore liable to him in damages; (3) that a contract to surrender a lease was a contract to surrender in possession free from sub-tenancies; (4) that if W. consented to the surrender, his tenancy was thereby surrendered and his right to remove fixtures was gone; and (5) that, in any case, by accepting the tenancy commencing on August 12th W. surrendered such tenancy as he already had and with it any right to remove fixtures.

LESCHALLAS v. WOOLF, [1908] 1 Ch. 641; 77  
[L. J. Ch. 345; 98 L. T. 558—Parker, J.]

**(c) Sporting Rights.**

[No paragraphs in this vol. of the Digest.]

**V. DURATION OF TENANCY.****(a) Notice to Quit.**

**5. Lease to Two Persons—Proviso Enabling Lessees to Determine Lease by Notice—Notice by One Only—Effect of.**—A lease to two lessees (husband and wife) contained a proviso that if "the lessees" wished to determine the lease at a certain date, they might give notice of their intention.

The husband gave a notice.

HELD—that the lease required notice by both, and that the mere fact that the rent had been paid by the husband was not sufficient to prove that he was his wife's agent for the purpose of giving notice.

IN RE VIOLA'S LEASE, HUMPHREY v. STENBURY,  
[[1908] W. N. 255—Warrington, J.]

**6. Three Months' Notice—Notice on August 1st to Quit on November 1st—Whether in Time—Lunar or Calendar Months.**—M. was tenant of certain premises from November 1st, 1902, for a term of years, the rent being payable in advance on May 1st and November 1st in each year. He had power to surrender the premises at the end of the first two years on giving three months' notice beforehand of his intention.

HELD—that, whether "months" meant lunar or calendar months, a notice received from him

**Duration of Tenancy—Continued.**

by the landlord on August 1st, 1904, of his intention to quit on November 1st was in time.

*Sidebotham v. Holland* ([1895] 1 Q. B. 378; 61 L. J. Q. B. 200; 72 L. T. 62; 43 W. R. 228—C. A.) followed.

*WILKINS v. MCGINITY*, [1907] 2 I. R. 661 [—C. A.]

**(b) Renewal.**

**7. Exchange of Old Lease Granted by Corporation for New Lease—New Lease Void or Voidable as being Without Approval of Local Government Board—Whether Old Lease Surrendered—Whether Corporation Stopped from Denying the Surrender—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50) s. 108—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 72.]**—In 1892 the defendant occupied certain premises under a lease granted in 1599 for the term of 300 years, which would expire in ordinary course in 1899. The lease was granted at a rent of 8*d.* per annum, but for more than 100 years the tenant had paid no rent. An action was brought against the defendant for rent, but a compromise was arrived at by which the defendant agreed to surrender the lease for 300 years if she were given a new lease for her life free of rent. Accordingly she handed the old lease to the plaintiffs and received from them in 1892 what purported to be a lease of the premises to her, free of rent, but containing a covenant to repair. The lease of 1892 was not approved of by the Local Government Board, and was, therefore, admittedly either void or voidable by reason of sect. 108 of the Municipal Corporations Act, 1882, as amended by sect. 72 of the Local Government Act, 1888. In an action to recover possession of the premises the defendant contended that the lease of 1892 was voidable, that the old lease had been surrendered in 1892, that the Statute of Limitations began to run in 1892, and that, therefore, she was entitled to the freehold.

**HELD**—that whether the lease of 1892 was void or voidable, there was no operative surrender of the former lease in 1892, and that, therefore, the Statute of Limitations did not begin to run till 1899, and the plaintiffs were entitled to recover possession of the premises.

**HELD ALSO**—that the plaintiffs were not estopped from setting up the invalidity of the lease of 1892, or from denying the efficacy of the surrender of the lease of 1599.

*CANTERBURY CORPORATION v. COOPER*, 72 J. P. [465; 99 L. T. 612; 6 L. G. R. 916—Div. Ct.]

**(c) Tenancy at Will.**

[No paragraphs in this vol. of the Digest.]

**(d) Tenancy from Year to Year.**

[No paragraphs in this vol. of the Digest.]

**(e) Weekly Tenancy.**

[No paragraphs in this vol. of the Digest.]

**(f) Life Tenancy.**

**8. Agreement for Tenancy—Premises Let “so long as Lessee, Executors, etc., shall Pay the**

*Yearly Rent.*—C. agreed to let premises to H. H. was to keep them in repair, and C., his heirs, executors, etc., were to continue H., his executors etc., in possession so long as he or they continued to pay the agreed yearly rent. There was, however, a covenant against selling, letting, or assigning without C.’s consent.

**HELD**—that the tenancy lasted during H.’s life.

*IN RE COLEMAN*, [1907], 1 I. R. 488—Ross, J.

**VI. RENT.**

[No paragraphs in this vol. of the Digest.]

**VII. RESTRICTIVE COVENANTS.**

**9. User—“Business of a Draper”—Covenant not to Carry On—Auctioneer Selling Furs—Whether a Breach.]**—To let premises to an auctioneer for him to hold there a particular sale of furs and fur-lined goods is not a breach of a covenant not to carry on “the business of a draper,” and not to allow the premises to be used “for the sale of or dealing in drapery goods.”

*WILLS v. ADAMS*, 25 T. L. R. 85—Warrington, J.

**VIII. RATES, TAXES AND OUTGOINGS.****(a) Charges Borne by Lessor.**

**10. Land Tax—Covenant by Lessor to Pay Land Tax—Building Agreement—Increase in Annual Value of Land—Proportion of Land Tax Payable by Lessor.]**—In pursuance of a building agreement the owners of a piece of land granted to a builder, on the completion of a certain house on the land, a lease of the house at a ground rent. By the lease the lessee covenanted to pay the rent and all outgoing except land tax and landlord’s property tax, and the lessors covenanted to pay the land tax chargeable on the demised premises. The annual value of the land was increased when the houses were erected on the land.

**HELD**—that the lessors were only liable to pay the proportion of the land tax based on the rent received by them, and not the land tax payable on the improved annual value of the land.

*Watson v. Home* ((1827), 7 B. & C. 285) and *Smith v. Humble* (1854), 18 J. P. 760; 15 C. B. 321) followed.

*MANSFIELD AND OTHERS v. RELF*, [1908] 1 K. B. [71; 77 L. J. K. B. 145; 71 J. P. 556; 97 L. T. 745; 24 T. L. R. 79—C. A.]

**(b) Factories and Workshops.**

[No paragraphs in this vol. of the Digest.]

**(c) Paving Expenses.**

[No paragraphs in this vol. of the Digest.]

**(d) Requirements of Sanitary Authority.**

[No paragraphs in this vol. of the Digest.]

**IX. REPAIRS, MAINTENANCE AND IMPROVEMENT.****(a) Alteration.**

[No paragraphs in this vol. of the Digest.]



## Repairs, Maintenance, and Improvement—Continued.

### (b) Building Covenants.

[No paragraphs in this vol. of the Digest.]

### (c) Insurance Covenants.

[No paragraphs in this vol. of the Digest.]

### (d) Liability of Landlord for Non-repair.

[No paragraphs in this vol. of the Digest.]

### (e) Repairing Covenants.

See No. 21, *infra*.

## X. COVENANTS BY LESSOR.

### (a) Restrictive Covenants.

[No paragraphs in this vol. of the Digest.]

### (b) Quiet Enjoyment.

**11. Implied Covenant—"Agree to Let"—Derogation from Grant—Persons Claiming through Lessor—Prior Mining Lease—Covenant with Trustees to Indemnify Lessor—Lessor Encouraging Mining Lessees to Cause Subsidence—Indemnity—Third Party Notice.**—The defendant, who was the tenant for life of a mansion house and grounds under the will of her husband and was also one of his executors and trustees, "agreed" to "let" and the plaintiff agreed to take the mansion house and grounds for a year, and thereafter from year to year, he agreeing to keep the inside of the premises in good and tenable repair and keep up the vineries and glasshouses. The defendant excepted the minerals, with power to work them, but without any power to let down the surface, and the agreement was not made subject to the under-mentioned mining leases. Some years previously the defendant's husband had entered into an agreement with adjoining landowners with a view of granting to a proposed company a lease of the coal underneath their several properties, but the husband died before this arrangement was carried out. It was eventually carried into effect by his trustees (including the defendant), who, with the adjoining landowners, joined in demising the coal and the right to work it to trustees (called the demising trustees), who in turn demised the coal and the right to work it to the company. The former of these indentures gave liberty "so far as the owners have power to grant such liberty" to work the seam without leaving any supports, and the second contained a similar clause, but without the qualification. There was no express mention of such a clause in the agreement which the defendant's husband had entered into, and it was not a usual provision in the district. By the second indenture the demising trustees reserved so much of the coal as should be necessary for the support of buildings as they should in writing require to be left, and in case serious damage by subsidence were reasonably anticipated the company were to have power, after notice in writing to the trustees, to leave without paying for it sufficient coal as should be agreed upon for the support of buildings. In the course of working the company desired to leave a sufficient pillar of coal for the support of the mansion house, but at the instance of the defendant the demising trustees withheld their consent

to the pillar being left, and as it was worked out the result was that serious subsidences took place, and the plaintiff suffered serious damage in his tenancy.

**HELD**—that the plaintiff was entitled to recover, inasmuch as (1) the company claimed title through the defendant and the other trustees and not merely through their testator; (2) the defendant had derogated from her grant, and (3) although the tenancy agreement only contained the word "let" it nevertheless implied a contract for a quiet enjoyment, of which there had been a breach by the defendant.

*Hard v. Fletcher* ((1778), 1 Doug. 43) applied.

**HELD FURTHER**—that the defendant could not claim an indemnity since the covenant for indemnity by the company was with the demising trustees and not with her, and also since she had instigated their acts.

**MARKHAM v. PAGET**, [1908] 1 Ch. 697; 77 L. J. [Ch. 451; 98 L. T. 605; 24 T. L. R. 426—Eady, J.]

## XI. DEROGATION FROM GRANT.

See No. 11, *supra*.

## XII. FORFEITURE.

### (a) Notice of Breach of Covenant.

**12. Covenant to Repair—Notice to Repair—Sufficiency of Notice—Acceptance of Rent after Notice—Waiver—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14, sub-s. 1.**—A notice under sect. 14 of the Conveyancing and Law of Property Act, 1881, which set out the general covenant to repair contained in a lease, and then set out two further special painting covenants which the lease did not contain at all, comprised a schedule of work required to be done generally, some at least of which was not properly referable to the general covenant.

**HELD**—that the notice was invalid.

After service of a notice under sect. 14 of the Act for non-repair, rent was received by the lessors on three successive quarter days during negotiations for the acceptance by the tenant of a new lease from the head landlords:

**HELD**—that the acceptance of the rent was a waiver of the forfeiture.

**GUILLEMARD v. SILVERTHORNE**, 99 L. T. 584—[Ridley, J.]

See also No. 21, *infra*.

### (b) Re-entry.

**13. Proviso for Re-entry upon Breach of Covenant—Severance of Reversion by Act of Law—Effect on Proviso.**—A proviso for re-entry upon breach of any condition is not destroyed by a severance of the reversion if such severance is not due to the voluntary act of the lessor, *e.g.*, if part of the premises are taken compulsorily by a public body.

*Winter's Case* ((1572), 3 Dyer, 308 (b)) followed).

**PIGGOTT v. MIDDLESEX COUNTY COUNCIL**, 77 [L. J. Ch. 813; 72 J. P. 461; 52 Sol. Jo. 698; [1908] W. N. 193—Eve, J.]

**Forfeiture—Continued.**

**14. Proviso for Re-entry—What constitutes Re-entry—Notice Determining Lease—Demand for Possession—Unequivocal Act Declaring Election—Inconsistent Claims in Writ.]**—The plaintiffs were the owners of certain mines which had been leased to the defendants. The lease provided that upon any breach of covenant the plaintiffs might re-enter, and thereupon the lease should determine. A breach having been committed by refusing entry for inspection, the plaintiffs gave written notice that they had determined the lease, and subsequently demanded possession. They then brought an action (1) to recover possession of the mines upon the ground of forfeiture for breach of covenant; (2) for mesne profits; (3) for an injunction to restrain the lessees from further working the mines so as to hazard, endanger, or occasion loss or damage to the mines; and (4) for an order on the lessees from time to time, and at all reasonable times, to permit the plaintiffs, their servants and agents, to enter upon the mines and to inspect them.

**HELD**—that, having regard to the form of the proviso, re-entry or a writ claiming possession alone was necessary in order to determine the lease; that the notice and demand were not sufficient; that the writ was not unequivocal but contained inconsistent claims, and was not, therefore, equivalent to re-entry, and that the claim to recover possession failed.

*Fenn v. Smart* (1810), 12 East, 444—*dicta* of Bayley, J.), *Jones v. Carter* (1846), 15 M. & W. 718—*dicta* of Parke, J.) and *Evans v. Davis* (1878), 10 Ch. D. 747; 48 L. J. Ch. 223; 39 L. T. 391; 27 W. R. 285) followed.

*MOORE v. ULLCOATS MINING CO., LD.*, [1908] 1 Ch. 575; 77 L. J. Ch. 282; 97 L. T. 845; 24 T. L. R. 54—Warrington, J.

On appeal, settled.

**(c) Relief against Forfeiture.**

**15. Conditions—Non-fulfilment of Conditions—Right of Plaintiff to Enforce—Ord. 42, r. 2.]**—A lessor recovered judgment against the executors of a lessee for possession of the property demised, upon the ground of forfeiture, and the defendants applied for relief. Relief was granted upon the defendants paying the rent in arrear, the costs of the action and of the application for relief as between solicitor and client, and entering into a personal covenant for payment of rent in terms similar to the lessee's covenant. The defendants remained in possession and paid the rent in arrear, but subsequently declined to proceed on the order giving relief and to carry out the conditions. The plaintiff applied for an order fixing the date for carrying out the terms of the order giving relief.

**HELD**—that the order did not give the Court power to compel the defendants to perform the conditions thereof; and that the order giving relief must be deemed to have been abandoned.

*TALBOT v. BLINDELL*, [1908] 2 K. B. 114; 77 [L. J. K. B. 540; 98 L. T. 859; 24 T. L. R. 477—Walton, J.

**XIII. DWELLING-HOUSES AND FLATS.**

See No. 1, *supra*.

**XIV. LICENSED PREMISES.**

**(a) Covenants against Forfeiture of Licence.**  
[No paragraphs in this vol. of the Digest.]

**(b) Maintenance of Business and Licence.**

**16. Receiver—Forfeiture—Preservation of Licences—Delivery of Possession to Receiver.]**—An owner of a licensed house has *prima facie* sufficient interest to justify an appointment of a receiver to preserve the licence pending litigation.

The tenant of a licensed house covenanted to keep the premises continuously open as an hotel and to conduct and manage the hotel in an orderly manner, and not to do anything whereby the licence might be endangered. The tenant made default in payment of a quarter's rent, and he shut up the hotel for short periods, as he had not the means to carry it on. In an action by the lessors to recover possession of the premises:—

**HELD**—that the Court could and would appoint a receiver of the licence and rents and profits, to receive the licence and keep the hotel open and do all acts necessary for preserving the licence.

Form of order settled.

*Charrington & Co. v. Camp* ([1902] 1 Ch. 386; 71 L. J. Ch. 196; 86 L. T. 15; 18 T. L. R. 152—Joyce, J.) discussed.

*LENEX AND SONS, LD. v. CALLINGHAM AND [THOMPSON]*, [1908] 1 K. B. 79; 77 L. J. K. B. 64; 97 L. T. 697; 24 T. L. R. 55—C. A.

**(c) Tied Houses.**

[No paragraphs in this vol. of the Digest.]

**XV. COVENANTS AGAINST ASSIGNING OR UNDERLETTING.**

**17. Covenant not to Assign—"Fine or Sum of Money in the Nature of a Fine"—Demand of Increased Rent—Covenant to Reside—Limited Company—Inability to Reside—Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 3.]**—A lease of a licensed house contained a covenant by the lessee not to assign, transfer, underlet, or part with the possession of the premises without the consent of the lessor, such consent not to be unreasonably withheld. The lessee applied to the lessor for his consent to assign the premises to a brewery company, and the lessor replied that he would agree to an assignment to a private person only who would carry on the business as a free house, but that if the assignment was to a brewery firm the rent must be increased by £25 a year. The lessor imposed this latter condition because a tied house was less valuable to sell than a free house.

**HELD**, by Eady, J.—that the condition was a "fine or sum of money in the nature of a fine" within the meaning of sect. 3 of the Conveyancing Act, 1892, and was one which the lessor could not impose; and that, therefore, the



### Covenants Against Assigning and Underletting —Continued.

lessor had unreasonably refused his consent, and the lessee might assign without further consent.

But that the lessee having no cause of action against the lessor for withholding consent, was not entitled to the costs of the action brought to obtain the declaration.

HELD, by the C. A.—that the covenant as to residence impliedly prohibited any assignment to a limited company.

Decision of Eady, J. ([1907] 2 Ch. 229; 76 L. J. Ch. 507; 23 T. L. R. 608) reversed on other grounds.

JENKINS v. PRICE, [1908] 1 Ch. 10; 77 L. J. Ch. [41; 97 L. T. 734; 24 T. L. R. 70; 14 Manson, 343—C. A.

**18. Covenant not to Assign without Leave — Payment for Leave — "Fine or Sum of Money in the Nature of a Fine" — Validity — Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 3.]**—Where a lease contains an unqualified covenant against assignment without the consent of the lessor, sect. 3 of the Conveyancing Act, 1892, does not render illegal the demand by the lessor from the lessee of a fine for giving assent to assign; and if the lessee pays the fine without protest he cannot recover it. If a fine is insisted upon, the lessee may ignore the covenant.

Decision of Channell, J. ([1907] 2 K. B. 494; 76 L. J. K. B. 879; 97 L. T. 432; 23 T. L. R. 548) affirmed.

ANDREW v. BRIDGMAN, [1908] 1 K. B. 596; 77 [L. J. K. B. 272; 98 L. T. 656—C. A.

**19. Covenant not to Underlet — Waterworks Company—Transfer of Undertaking to Water Board—Whether Board Bound by the Covenant—Statutory Powers—Metropolis Water Act, 1902 (2 Edw. 7, c. 41), ss. 2 (1), 24 (1), (2), 37, 45—Metropolitan Water Board (Various Powers) Act, 1907 (7 Edw. 7, c. clxxiv.), s. 53.]**—By the Metropolis Water Act, 1902, the undertaking and property of the Grand Junction Waterworks Company were transferred to the plaintiffs, the Metropolitan Water Board. Included in the property so transferred were certain leasehold premises which in 1881 had been demised to the company by a lease which contained a covenant by the lessees not to sell, assign, or underlet without the written consent of the lessors, and a condition of re-entry on breach of any of the lessees' covenants. The leasehold reversion was now vested in the defendants, who refused to give their consent to a proposed underletting by the plaintiffs. In an action for a declaration that the plaintiffs were entitled to underlet without such consent:—

HELD—that the plaintiffs could only dispose of such interest as they had in the property, viz., a lease liable to be determined in the event of an assignment or underletting without the required consent. The defendants were not deprived by the statute of their right to re-enter

upon breach of the covenants of the lease. The declaration was accordingly refused.

METROPOLITAN WATER BOARD v. SOLOMON, [[1908] 2 Ch. 214; 77 L. J. Ch. 517; 72 J. P. 259; 98 L. T. 712; 24 T. L. R. 490; 52 Sol. Jo. 443; 6 L. G. R. 594—Joyce, J.

### XVI. EFFECT OF ASSIGNMENT ON COVENANTS.

#### (a) Assignment of Lease.

**20. Covenant Running with the Land—Lease and Underlease—Covenant by Underlessor to Perform Covenants in Lease—Covenant to Repair—Covenant to Indemnify—Collateral Covenant.]**—A lease of land contained a covenant by the lessee to keep all buildings erected on the land in repair, with a proviso for re-entry on breach of the covenant. Part of the land comprised in the lease was underlet, the underlease containing a covenant by the underlessor, his executors, administrators, and assigns, to perform the several covenants and conditions contained in the indenture of lease so far as the same related to or affected that part of the property included in the lease but not demised by the underlease. The underlease also contained a proviso that the covenants on the part of the underlessor were entered into with the intention of binding him and his representatives only while he or they continued to hold the reversion, and of binding, so far as could be, any other person or persons for the time being entitled to the reversion. Subsequently the lease became vested in the defendant, and the plaintiff became assignee of the underlease. The defendant failed to perform the covenant in the lease to repair certain houses erected on that part of the land not comprised in the underlease, and the assignee of the reversion expectant on the lease recovered judgment for possession of the whole of the property comprised in the lease, and the plaintiff was ejected. In an action to recover damages for breach of the covenant in the underlease:—

HELD—that the covenant in the underlease relating to premises not demised thereby was merely collateral, and did not run with the land so as to bind the assigns (though named) of the underlessor, and that therefore the plaintiff could not recover.

*Doughty v. Bowman* ((1848), 11 Q. B. 444) discussed.

*Sampson v. Easterby* ((1829), 9 B. & C. 505; (1830), 6 Bing. 644) distinguished.

Decision of Jelf, J. ([1907] 1 K. B. 612; 76 L. J. K. B. 214; 96 L. T. 364; 23 T. L. R. 225) affirmed.

DEWAR v. GOODMAN, [1908] 1 K. B. 94; 77 [L. J. K. B. 169; 97 L. T. 885; 24 T. L. R. 62—C. A.

Affirmed 25 T. L. R. 137; [1908] W. N. 250; 53 Sol. Jo. 116—H. L.

#### (b) Assignment of Reversion.

**21. Severance of Reversion—Land taken under Statutory Powers—Effect on Conditions in Lease—Lease before 1881—Liability of Public Body**



**Effect of Assignment on Covenants—Continued.**

*on Covenants in Lease—Compensation under Sect. 68 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18)—Notices as to Breach of Covenant under Sect. 14 of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41).*—A county council, in the exercise of statutory powers, compulsorily acquired from a freeholder one-third of a piece of his land upon which two cottages were standing, being a strip thereof fronting a public road. The freeholder elected to retain the remaining two-thirds of his property. The council also acquired the leasehold interest, which was held under a lease of 1867, in the whole of the property. They pulled down the whole of the cottages, not only that part of them situate on the strip, and let the remainder of the property to a stonemason, who used it for his trade.

Upon action by the freeholder, the lessor, to enforce his right of re-entry and for damages for breach of covenants in the lease to repair and keep the gardens of the cottages in cultivation :—

**HELD**—(1) that the severance of the reversion being an involuntary act on the part of the lessor did not destroy the condition of re-entry (*Winter's Case* (1572), 3 Dyer, 308 (*b*) followed) ;

(2) That the remedy by compensation under sect. 68 of the Lands Clauses Consolidation Act, 1845, was not applicable, as the damage was not the result of the proper exercise of statutory powers ;

(3) That it is not necessary in giving notice as to breaches of covenant under sect. 14 of the Conveyancing Act, 1881, after stating the particular breach, and requiring the recipient to remedy it, to also state what he is required to do in order to remedy it ;

(4) That the covenant to repair was applicable to a part of the property.

**HELD**, therefore—that there must be an order for possession, mesne profits, and damages.

**PIGGOTT v. MIDDLESEX COUNTY COUNCIL**, 77 [L. J. Ch. 813 ; 72 J. P. 461 ; 52 Sol. Jo. 698 ; 6 L. G. R. 1177 ; [1908] W. N. 193—Eve, J.

**LARCENY.**

*See CRIMINAL LAW AND PROCEDURE.*

**LAW SOCIETY.**

*See SOLICITORS.*

**LEAVE AND LICENCE.**

*See EASEMENTS.*

**LEGACIES.**

*See WILLS.*

**LEGACY DUTY.**

*See DEATH DUTIES.*

**LEGITIMACY AND LEGITIMATION.**

*See BASTARDY.*

**LETTERS.**

*See CONTRACT.*

**LETTERS PATENT.**

*See PATENTS AND INVENTIONS.*

**LIBEL AND SLANDER.****I. LIBEL.**

(a) Fair Comment on Matters of Public Interest . . . . . 344

(b) Miscellaneous . . . . . 345

[No paragraphs in this vol. of the Digest.]

(c) Practice . . . . . 345

(d) Privilege . . . . . 345

(e) Publication . . . . . 346

(f) Words Capable of Defamatory Meaning . . . . . 347

[No paragraphs in this vol. of the Digest.]

**II. SLANDER.**

(a) Actionable *per se* . . . . . 347

[No paragraphs in this vol. of the Digest.]

(b) Practice . . . . . 347

[No paragraphs in this vol. of the Digest.]

(c) Privilege . . . . . 347

(d) Special Damage . . . . . 347

[No paragraphs in this vol. of the Digest.]

**III. TRADE LIBEL . . . . . 347**

[No paragraphs in this vol. of the Digest.]

**IV. CRIMINAL PROCEDURE . . . . . 347**

[No paragraphs in this vol. of the Digest.]

*See also CRIMINAL LAW ; DISCOVERY, Nos. 2, 7 ; PLEADINGS, No. 2.*

**I. LIBEL.**

(a) Fair Comment on Matters of Public Interest.

**1. Fair Comment — Justification — Misdirection.**—In an action for libel against the proprietor of a newspaper, where the defendant pleads “justification” and “fair comment,” it is a misdirection to direct the jury that the statement complained of cannot be regarded as

**Libel—Continued.**

fair comment unless the justification be made out.

It is for a Judge to say as a matter of law whether a personal attack can be reasonably inferred from the statement of facts upon which it purports to be a comment, but it is for a jury to say whether (if the inference can be drawn) it ought to be drawn.

DAKHYL v. LABOUCHERE, [1908] 2 K. B. [325 n.; 77 L. J. K. B. 728; 96 L. T. 399; 23 T. L. R. 364—H. L.]

**2. Fair Comment—Imputation of Improper Motives—Misdirection.**—[Comment upon a matter of public interest may be fair comment, though it conveys personal imputations of an improper kind, if the facts truly stated warrant the imputations. Whether a personal attack in any given case can reasonably be inferred from the truly stated facts upon which it purports to be a comment is for the Judge, and if the inference is capable of being reasonably drawn it is for the jury to say whether in the particular case it ought to be drawn.]

HUNT v. STAR NEWSPAPER COMPANY, [1908] [2 K. B. 309; 77 L. J. K. B. 732; 98 L. T. 629; 24 T. L. R. 452; 52 Sol. Jo. 376—C. A.]

**(b) Miscellaneous.**

[No paragraphs in this vol. of the Digest.]

**(c) Practice.**

**3. Damages—Taking Circumstances Outside Libel into Consideration—Separate Cause of Action—Direction to Jury.**—[In assessing damages for libel the jury may have regard to the whole conduct of the defendant before and after the publication of the libel down to the verdict as showing the existence of a malicious motive, but the jury ought not to treat such prior or subsequent circumstances as giving a separate and independent right to damages, and the Judge should caution them against doing so.]

A Judge at the trial omitted to direct the jury clearly that, though they might give punitive damages for malice, they must not give damages for another cause of action.

HELD—in the circumstances, not a ground for granting a new trial.

ANDERSON v. CALVERT, 24 T. L. R. 397—C. A.

**(d) Privilege.**

**5. Parliamentary Paper—Paper Printed as a Blue-book—Extract from Paper—Liability of Persons Publishing Extract—Parliamentary Papers Act, 1840 (3 & 4 Vict. c. 9), s. 3.**—[Any person who *bonâ fide* and without malice publishes an extract from or an abstract of a Parliamentary Paper is protected by sect. 3 of the Parliamentary Papers Act, 1840, against an action of libel brought in respect of a statement contained in such extract or abstract.]

MANGENA v. EDWARD LLOYD, LD., 98 L. T. [640; 24 T. L. R. 610—Darling, J.]

On appeal: reversed on the facts, *i.e.*, on the ground that part of the defamatory matter was

a headline forming no part of the Parliamentary Paper in question (25 T. L. R. 26)—C. A.

**6. Report of Official Receiver—Winding up of Company—Companies (Winding Up) Act, 1890 (53 & 54 Vict. c. 63), s. 8.**—[A report by the official receiver to the Court under sect. 8 of the Companies (Winding Up) Act, 1890, dealing with the affairs of a company which had been ordered to be wound up, is absolutely privileged; and there can be no inquiry in an action for libel as to whether or not it was prompted by malice. Nature of the privilege attaching to statements by judicial officers, advocates and witnesses discussed.]

BOTTOMLEY v. BROUGHAM, [1908] 1 K. B. 584; [77 L. J. K. B. 311; 99 L. T. 111; 24 T. L. R. 262; 52 Sol. Jo. 225—Channell, J.]

**7. Trade Protection Society—Communicating Facts to Subscribers—Duty to Communicate.**—[A trade protection society held themselves out as being ready to communicate to subscribers and others who paid for it, for their exclusive use and benefit in their business, confidential information as to the commercial standing and responsibility of persons with the view of aiding the inquirers to determine the propriety of giving credit to such persons.]

HELD—that such communications, being made not from a sense of duty or in the public interest, but for the purpose of a profit-making business, were not made upon a privileged occasion.

Decision of the High Court of Australia (3 Commonwealth L. R. 1134) reversed.

MCINTOSH AND ANOTHER v. DUN AND OTHERS, [[1908] A. C. 390; 77 L. J. P. C. 113; 99 L. T. 64; 24 T. L. R. 705; 52 Sol. Jo. 580—P. C.]

**8. Trade Protection Society—Malice of Agent—How Far Principal Affected by—Trade Protection Society—Inquiry Agents.**—[A tradesman applied to K. & Co., a firm of "mercantile inquiry agents," for advice as to the plaintiff's credit. The local manager of K. & Co. in the county where the plaintiffs carried on business, asked for a report from the "local correspondent." Having received such report, he condensed it and forwarded it to the inquirers. In an action for libel in respect of the condensed report, against K. & Co. and their local correspondent, the jury found that the document was libellous, that it was published by K. & Co. and by the local correspondent, that there was malice on his part.]

HELD—that the plaintiff was entitled to judgment against both defendants.

FITZSIMMONS AND DUNCAN v. KEMP & CO., LD., [1908] 2 I. R. 483—C. A.]

**(e) Publication.**

**9. Letter Addressed to Solicitor at His Office—Course of Business—Evidence for the Jury.**—[The defendant wrote and addressed a libellous letter to the plaintiff, a solicitor, at his office. The letter was opened by the plaintiff's partner in the course of business. The defendant had

**Libel—Continued.**

previously received letters from the plaintiff in different handwriting and type-written with different initials under the signatures, indicating that they had been signed by the plaintiff's clerks.

HELD—that on the question of publication there was evidence to go to the jury.

SHARP v. SKUES, *Times*, November 4th, 1908—  
[Phillimore, J.]

**(f) Words Capable of Defamatory Meaning.**

[No paragraphs in this vol. of the Digest.]

**II. SLANDER.****(a) Actionable per se.**

[No paragraphs in this vol. of the Digest.]

**(b) Practice.**

[No paragraphs in this vol. of the Digest.]

**(c) Privilege.**

9a. *Board of Guardians — Conduct of Assistant Overseer — Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 62.*—The defendant, the chairman of a board of guardians, at a meeting of the board, uttered certain statements concerning the plaintiff in his capacity of collector of rates in a parish in that union, which the plaintiff alleged were defamatory.

HELD—that the words were defamatory; but

HELD ALSO—that (in view particularly of the Poor Law Amendment Act, 1884, s. 62) the board had an interest in the proper collection of rates within their union, that the occasion was therefore privileged, and that the plaintiff could not succeed without proof of malice.

MAPEY v. BAKER, 72 J. P. 511; 6 L. G. R. 1061  
[—Walton, J.]

10. *Liability of Employer for Servant's Words—Music Hall — Member of Audience Ejected — Slander by Servant so Ejecting — Malice—Privilege.*—An employer is liable for a slander uttered by his servant in the course of the servant's employment and for the employer's benefit.

A music hall regulation required the manager to exclude prostitutes. His servant requested a person to leave, alleging that she was a prostitute.

HELD—that the occasion was privileged and that malice must be proved; but that, if it were proved, the manager would be liable in respect of his servant's words.

FINBURGH v. MOSS'S EMPIRES, LD., [1908]  
[S. C. 928; 45 Sc. L. R. 792—Ct. of Sess.]

**(d) Special Damage.**

[No paragraphs in this vol. of the Digest.]

**III. TRADE LIBEL**

[No paragraphs in this vol. of the Digest.]

**IV. CRIMINAL PROCEDURE.**

[No paragraphs in this vol. of the Digest.]

**LIBRARY.**

See LOCAL GOVERNMENT.

**LICENCE.**

In respect of game—See GAME; SPORT.

In respect of land—See REAL PROPERTY; EASEMENTS.

In respect of patent—See PATENTS AND INVENTIONS.

For marriage—See HUSBAND AND WIFE.

In respect of minerals—See MINES, MINERALS AND QUARRIES.

In respect of hawkers and pedlars—See MARKETS AND FAIRS.

For sale of intoxicants—See INTOXICATING LIQUORS.

For music and dancing—See THEATRES, MUSIC HALLS, AND SHOWS.

For cabs, etc., and drivers—See STREET TRAFFIC.

To carry gun, etc.—See REVENUE; GAME.

Excise—See REVENUE.

Generally—See REVENUE.

**LIEN.**

See ADMIRALTY; BAILMENT; BILLS OF SALE; BUILDERS; SHIPPING; SOLICITORS.

**LIEN IN EQUITY.**

[No paragraphs in this vol. of the Digest.]

**LIFE INSURANCE.**

See INSURANCE.

**LIGHT.**

See EASEMENTS.

**LIGHT RAILWAYS.**

See TRAMWAYS AND LIGHT RAILWAYS.

**LIMITATION OF ACTIONS.**

I. MISCELLANEOUS . . . . . COL.  
[No paragraphs in this vol. of the Digest.] 349

II. ACKNOWLEDGMENT OF DEBT 349



**Limitation of Actions—Continued.**

COL.

III. PART PAYMENT . . . . .	349
[No paragraphs in this vol. of the Digest.]	
IV. JUDGMENT . . . . .	349
[No paragraphs in this vol. of the Digest.]	
V. FRAUD . . . . .	349
[No paragraphs in this vol. of the Digest.]	
VI. RECOVERY OF MONEY CHARGED UPON LAND . . . . .	349
[No paragraphs in this vol. of the Digest.]	
VII. RIGHTS TO REAL PROPERTY . . . . .	349
[No paragraphs in this vol. of the Digest.]	
VIII. MORTGAGOR AND MORTGAGEE . . . . .	350
IX. ACTIONS AGAINST EXECUTORS . . . . .	351
X. TRUSTEES . . . . .	351
[No paragraphs in this vol. of the Digest.]	

*See also* DEPENDENCIES AND COLONIES, No. 17; DOWER, No. 1; EXECUTORS, No. 22; PUBLIC AUTHORITIES; SOLICITORS, No. 10; TRUSTS AND TRUSTEES, No. 8a.

**I. MISCELLANEOUS.**

[No paragraphs in this vol. of the Digest.]

**II. ACKNOWLEDGMENT OF DEBT.**

*See also* No. 3, *infra*.

1. *Payment by Cheque—Arrangement not to Present Cheque till Certain Date—Cheque given more than Six Years before Action—Presented and Paid Less than Six Years Before Action—Limitation Act, 1623 (21 Jac. 1, c. 16)—Statute of Frauds Amendment Act, 1828 (9 Geo. 4, c. 14), s. 1.*—On May 10th, 1900, the defendant gave to a creditor a cheque for part of the debt due from him; the cheque was post-dated May 20th, 1900, and it was arranged between them that it should not be presented until June 20th, 1900. The cheque was on that date presented and paid. In an action to recover the balance of the debt commenced on June 18th, 1903:—

**HELD**—that the promise to pay the whole debt implied from the giving of the cheque must be deemed to have been made on the date when the cheque was given, and that, as such implied promise was made more than six years before action, the action was barred from the Statute of Limitations.

**MARRECO v. RICHARDSON**, [1908] 2 K. B. 584; [77 L. J. K. B. 859; 99 L. T. 486; 24 T. L. R. 624; 52 Sol. Jo. 516—C. A.]

**III. PART PAYMENT.**

[No paragraphs in this vol. of the Digest.]

**IV. JUDGMENT.**

[No paragraphs in this vol. of the Digest.]

**V. FRAUD.**

[No paragraphs in this vol. of the Digest.]

**VI. RECOVERY OF MONEY CHARGED UPON LAND.**

[No paragraphs in this vol. of the Digest.]

**VII. RIGHTS TO REAL PROPERTY.**

[No paragraphs in this vol. of the Digest.]

**VIII. MORTGAGOR AND MORTGAGEE.**

2. *Mortgage of Real Estate subject to Trust for Conversion—Rents and Profits of Unconverted Real Estate—Payment into Court by Trustees under Trustee Act, 1893—Payment out—Application by Mortgagees—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 34—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57) s. 8.*—H., who died in 1878, gave the residue of his real and personal estate to trustees upon trust to sell and convert at their discretion and to divide the proceeds among his four children in equal shares. The trustees, in exercise of their discretion, retained a certain freehold house and treated it as forming part of the testator's residuary trust estate. In 1889 two of the children mortgaged their interests in this property and "the proceeds thereof." In 1896 and 1905 the trustees paid into Court under the Trustee Act, 1893, certain sums representing the shares of the mortgagees in the rents and profits of this property. No part of the principal secured by the mortgage nor any interest thereon was ever paid, nor was any acknowledgment given by the mortgagees. In 1905 a summons by the mortgagees for payment out to them was dismissed. On a subsequent application by the mortgagees for payment out to them of the fund:—

**HELD**—that the mortgagees were entitled to payment and need not satisfy the mortgage debt, for (1) the mortgagees were bound by the dismissal of their own previous summons, and (2) their title had been extinguished by sect. 34 of the Real Property Limitation Act, 1833.

*In re Lloyd* ([1903] 1 Ch. 385; 72 L. J. Ch. 78; 51 W. R. 177; 87 L. T. 541; 19 T. L. R. 101—C. A.) distinguished.

Decision of Warrington, J. ([1907] 1 Ch. 686; 76 L. J. Ch. 416) reversed.

**IN RE HAZELDINE'S TRUSTS**, [1908] 1 Ch. 34; [77 L. J. Ch. 97; 97 L. T. 818—C. A.]

3. *Mortgage—Acknowledgment—Part Payment—Disputed Payment—Interest on a Gift.*—Certain lands were subject to a mortgage. Since 1884 no money was paid by the mortgagor in respect of the interest thereon, but the mortgagee (his sister) alleged that bags of potatoes were sent every year to her in lieu of payment of interest. The mortgagor alleged that they were sent merely as presents. The mortgagor died in 1905, and his executrix, in the schedule of assets, set out the mortgage as a subsisting incumbrance. Upon a summons by the personal representatives of the mortgagee for an order declaring the mortgage well charged, and for a sale:—

**HELD**—that the present proceeding being in the nature of an action for foreclosure was not a proceeding to recover a sum of money charged on land, but to recover the land itself, and that consequently the title of the mortgagee after the expiration of the statutory period could not be revived by a subsequent acknowledgment; and secondly, that the question whether the potatoes were sent in lieu of interest upon the mortgage

**Mortgagor and Mortgagee—Continued.**

debt, or as presents, ought not to be decided upon such a summons.

BEAMISH *v.* WHITNEY, [1908] 1 I. R. 35 —  
[Barton, J.]

**IX. ACTIONS AGAINST EXECUTORS.**

**4. Administration — Claim against Executors—Devastavit—Payment to Wrong Persons—Statute of Limitations.**—In this action, commenced on April 7th, 1908, the plaintiffs sought payment of one-sixth of E. C.'s personal estate, which had been distributed by E. C.'s executors in 1891 inadvertently without reference to the plaintiffs' claims, and administration of E. C.'s estate and, so far as necessary, of certain other estates. The defendants, the executors of E. C.'s executors, pleaded that the claim was barred by the Trustee Act, 1888, s. 8, and the statute 21 Jac. 1, c. 16, s. 3.

**HELD**—that, so far as the claim was founded on the innocent wrong of E. C.'s executors, it was barred by the Statute of Limitations, that the statutes afforded no answer to the claim for administration of E. C.'s estate, and that until the result of taking the accounts of E. C.'s estate had been ascertained, to save expense, administration of the other estates would not be directed, and that the measure of right to recover from the beneficiaries was that of the executor's liability to the creditors of the estate.

RE CROYDON, HINCKS *v.* ROBERTS, 125 L. T.  
[Jo. 282—Eve, J.]

**5. Executor Holding Residue for Wrong Party—Intestacy—Executor not Express Trustee for Next of Kin—Title of Next of Kin Barred.**—A testator who died in 1872 devised and bequeathed his freehold and leasehold property to his daughter B., and, in the event (which happened) of her dying unmarried, to his daughter C. absolutely. The gift was admeemed by the sale of the property in the testator's lifetime. The purchase money was invested by him in certain shares, which were held by him at the date of his death. The will contained no residuary bequest. The executors treated the shares as held on the same trusts as those originally declared as to the lands and paid the dividends to B. and after her death to D., the husband of C., who survived her.

On the death of D. in 1906 his daughter E., who was personal representative of both her father and mother, applied to the executor of the surviving executor to transfer the shares, which under advice he declined to do.

**HELD**—that the executors were not express trustees of the shares for the next of kin; that the title of the next of kin to the shares was barred by statute; and that E. was entitled.

IN RE M'CAUSLAND'S TRUSTS, [1908] 1 I. R.  
[327—Kenny, J.]

**X. TRUSTEES.**

[No paragraphs in this vol. of the Digest.]

**LIMITATION OF LIABILITY.**

*See* ADMIRALTY; SHIPPING.

**LIQUIDATED DAMAGE.**

*See* DAMAGES.

**LIQUIDATION.**

*See* COMPANIES.

**LIS PENDENS.**

*See* SALE OF LAND.

**LITERARY PROPERTY.**

*See* COPYRIGHT AND LITERARY PROPERTY.

**LITERARY SOCIETIES.**

*See* SCIENTIFIC AND LITERARY SOCIETIES.

**LIVERPOOL COURT OF PASSAGE.**

*See* COURTS.

**LIVERY STABLE KEEPERS.**

*See* BAILMENT; NEGLIGENCE.

**LLOYD'S.**

*See* INSURANCE.

**LOCAL AUTHORITIES.**

*See* LOCAL GOVERNMENT.

**LOCAL GOVERNMENT.**

**I. IN GENERAL.**

(a) Accounts and Audit . . . . .	353
(b) Areas and Boundaries . . . . .	354
(c) Burial . . . . .	355
(d) Bye-laws (other than Building Bye-laws) and Local Acts . . . . .	355
(e) Contracts . . . . .	356
(f) Meetings . . . . .	357

COL.

**Local Government—Continued.****I. IN GENERAL—Continued.**

COL.

- (g) Members, Officers, and Servants.  
 (a) *In General* . . . . . 357  
 (b) *Disqualifications* . . . . . 358  
 (h) Powers . . . . . 359  
 (i) Practice . . . . . 360  
 [No paragraphs in this vol. of the Digest.]  
 (j) Tort . . . . . 360  
 [No paragraphs in this vol. of the Digest.]

**II. BUILDINGS AND BUILDING BYE-LAWS.**

- (a) Building Line . . . . . 360  
 [No paragraphs in this vol. of the Digest.]  
 (b) Continuing Offence . . . . . 360  
 [No paragraphs in this vol. of the Digest.]  
 (c) Crown . . . . . 360  
 [No paragraphs in this vol. of the Digest.]  
 (d) Deposit and Approval of Plans . . . . . 360  
 (e) Exemptions and Dispensations . . . . . 360  
 [No paragraphs in this vol. of the Digest.]  
 (f) Floors . . . . . 360  
 [No paragraphs in this vol. of the Digest.]  
 (g) Notice . . . . . 360  
 [No paragraphs in this vol. of the Digest.]  
 (h) *Res Judicata* . . . . . 360  
 [No paragraphs in this vol. of the Digest.]  
 (i) Remedies for Breach . . . . . 360  
 (j) Waterworks . . . . . 361  
 (k) Words: "New Buildings," "Building," "Sign," "Letting," etc. . . . . 361

**III. MISCELLANEOUS . . . . . 361**

*See also* CHARITIES; COMPULSORY PURCHASE; EDUCATION; EXPLOSIVES; FOOD AND DRUGS; HIGHWAYS; LANDLORD AND TENANT, No. 7; NEGLIGENCE; NUISANCE; PUBLIC AUTHORITIES; PUBLIC HEALTH; POOR LAW (OVERSEERS); SEWERS AND DRAINS; SOLICITORS, No. 3; TELEGRAPHS; TRAMWAYS; WATERWORKS.

**I. IN GENERAL.****(a) Accounts and Audit.**

1. *Powers and Duties of Auditor—Surcharge—Acceptance of Tenders—Checking of Quantities—Certiorari to Quash—Jurisdiction of Court—Public Health Act, 1875* (38 & 39 Vict. c. 55), s. 247 (7) (8).—Where an auditor acting in pursuance of sect. 247 of the Public Health Act, 1875, disallows items of account as being contrary to law and surcharges them on the person making or authorising the payment, the Court has power to review his decision not only when it is erroneous in point of law, but also if the Court is of opinion that the auditor has gone wrong on the merits and that on the balance of evidence he was not justified in making the surcharges.

*R. v. Haslehurst* ((1887) 51 J. P. 645—Div. Ct.) followed.

Y.D.

Per Cozens-Hardy, M. R., and Farwell, L. J.—An auditor appointed by the Local Government Board under sect. 247 of the Public Health Act, 1875, to audit the accounts of a metropolitan borough council is authorised and required by sub-sect. (7) to decide whether any member or officer of the council has been guilty of negligence or misconduct in relation to the accounts whereby loss has been occasioned to the council, and to assess the amount of the loss.

Per Fletcher Moulton, L. J.—The powers and duties of the auditor under sub-sect. (7) of sect. 247 are strictly confined to auditing, and the words "person accounting" in the latter part of that sub-section, which requires the auditor to "charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person," mean the person who brings in accounts for audit. Therefore, where the accounts submitted for audit are the accounts of a metropolitan borough council, the person accounting is the council, and the auditor has no power to inquire into the negligence or misconduct of the individual members or servants of the council.

A district auditor, under sect. 247 of the Public Health Act, 1875, disallowed and surcharged certain payments made by the Finance Committee of a local authority for shingle, and by the Highways Committee in respect of a contract for the supply of certain goods, upon the grounds that the shingle as delivered by the contractors must have been short in weight, the deliveries not having been, in his opinion, properly checked, and that the tender for the supply of the goods which was accepted was not the lowest tender, and he disallowed the amount which he estimated as the loss to the ratepayers therefrom. The Highways Committee stated that they had accepted the tender which they considered the most advantageous. Upon an application for a writ of *certiorari* to bring up and quash the disallowance:—

**HELD**—that there being no evidence of dishonesty or negligence the surcharge should be quashed.

Decision of Div. Ct. ([1907] 2 K. B. 878; 76 L. J. K. B. 1113; 71 J. P. 288; 96 L. T. 733; 23 T. L. R. 491; 5 L. G. R. 1017) affirmed.

*R. v. CARSON ROBERTS* ([1908] 1 K. B. 407; [77 L. J. K. B. 281; 72 J. P. 81; 98 L. T. 154; 24 T. L. R. 226; 52 Sol. Jo. 171; 6 L. G. R. 268—C. A.

**(b) Areas and Boundaries.**

2. *Creation of New Urban District—Adjustment of Property and Liabilities—Power to Compromise—Local Government Act, 1888* (51 & 52 Vict. c. 41), s. 62—*Costs—Public Authorities Protection Act, 1893* (56 & 57 Vict. c. 61).—In 1900 a district which had previously formed part of a rural district was constituted a separate urban district. After considerable negotiations between the councils of the rural and urban districts as to the adjustment of the property, income, debts, liabilities and expenses affected by the separation, under sect. 62 of the Local Government Act, 1888, an agreement was come to whereby a considerable sum was to be paid by



**In General—Continued.**

the urban council to the rural council in settlement of (among other claims) an estimated annual loss in income owing to the transfer of rateable area from the rural district to the urban district.

The urban council now brought an action against the rural council in which they alleged that the agreement was *ultra vires* and not binding upon them, as, according to a recent decision in the House of Lords the rural council was not entitled to any payment as compensation for loss of area.

**HELD**—that the agreement having been made *bonâ fide* between the councils in settlement of their respective claims, the fact that one of the claims put forward *bonâ fide* by one of the parties was not well founded in law was no ground for setting aside the compromise, and that the action failed.

**HELD, ALSO**—that the defendants were not entitled to costs as between solicitor and client, under the Public Authorities Protection Act, 1893, the action not being brought by the plaintiffs for any act done by the defendants.

**HOLSWORTHY URBAN DISTRICT COUNCIL v. [HOLSWORTHY RURAL DISTRICT COUNCIL, [1907] 2 Ch. 62; 76 L. J. Ch. 389; 91 J. P. 330; 97 L. T. 634; 23 T. L. R. 462; 5 L. G. R. 791—Warrington, J.**

**(c) Burial.**

*See title* BURIAL AND CREMATION.

**(d) Bye-laws (other than Building Bye-laws) and Local Acts.**

**3. Seashore—Erections on—Weston-super-Mare Improvement Act, 1887 (50 & 51 Vict. c. cvii.), ss. 79, 149.]**—The respondents' local Act empowered them to make bye-laws for prohibiting or regulating the erection on the foreshore, sands or wastes, of any booth or other erection, which in their opinion might be a cause of danger, obstruction, nuisance, or annoyance, and generally for regulating the user of the foreshore, sands, and wastes. The respondents made a bye-law forbidding the erection of any booth or other erection on the foreshore, sands or wastes, provided that the prohibition should not apply in any case where the respondents granted permission for the erection. The appellant erected without permission a certain structure which the justices found as a fact was an erection within the bye-law, and they convicted and fined the appellant.

**HELD**—that the bye-law was valid, as the local Act gave power to the respondents to say that any booth or erection was *prima facie* a cause of danger, obstruction, nuisance, or annoyance, and the bye-law was not rendered invalid by the fact that the respondents had reserved to themselves a power to grant permission in particular cases.

*Parker v. Bournemouth Corporation* ((1902) 66 J. P. 440) distinguished.

**WILLIAMS v. WESTON-SUPER-MARE URBAN [DISTRICT COUNCIL, 72 J. P. 54; 98 L. T. 537; 6 L. G. R. 92—Div. Ct.**

**4. Seashore—Regulation of Selling and Hawking—Barry Urban District Council Act, 1896 (59 & 60 Vict. c. cexlv.), s. 81.]**—By sect. 81 of the Barry Urban District Council Act, 1896, the Council were empowered, for the prevention of danger, obstruction, nuisance or annoyance, to make bye-laws for regulating, selling, and hawking on the seashore. The council made a bye-law that where any part of the seashore had, by notice, been set apart for selling and hawking certain articles, no person should offer for sale or hawk any article so specified on any other part of the seashore, and they set apart, by notices, a certain part of the seashore for the sale and hawking of certain articles. By one of those notices a charge of 2s. 6d. a week for permits was imposed, and the grant of permits was limited to residents in Barry. The appellant was summoned for selling articles of the kind specified on a part of the seashore not set apart by notice for their sale, and was convicted.

**HELD**—that the bye-law must be taken to incorporate the above notice, and that the conviction must be quashed; per Alverstone, L.C.J., on the ground that the bye-law was *ultra vires*; per A. T. Lawrence and Sutton, JJ., on the ground that it was *ultra vires* and unreasonable. **MOORMAN v. TORDOFF, 72 J. P. 142; 98 L. T. [416; 6 L. G. R. 360—Div. Ct.**

**(e) Contracts.**

*See also* BUILDERS, No. 1; SOLICITORS, No. 3.

**5. Seal—Contract with—Municipal Corporation—Statutory Power to Trade—Contract not under Seal—Contract to Pay Implied from Acceptance of Benefit—Transaction Necessary for Carrying on Trade.]**—A borough council, being the electric light authority for the borough, and having statutory power to supply electricity, contracted to supply electricity to the plaintiffs' premises by a certain date. The contract was not under seal, but was alleged to have been made by officers of the electric light committee of the borough council who had, or were held out by the council as having, authority to make the said contract. In an action for damages for breach of the said contract, it was

**HELD**, by Ridley, J.—(1) that the electric light committee had, under bye-laws of the council, authority to execute and perform all the duties and powers of the council under the Electric Lighting Acts and the Electric Lighting Order of the borough.

(2) That the contract was binding on the defendants, notwithstanding that it was not under seal.

The C. A. reversed the decision on the ground that there was no evidence of the making of the contract, or (at any rate) none of the officers' authority to make it.

Decision of Ridley, J. (72 J. P. 129; 24 T. L. R. 322; 6 L. G. R. 406; 52 Sol. Jo. 281) reversed.

**BOURNE AND HOLLINGSWORTH v. MARYLEBONE [BOROUGH COUNCIL, 72 J. P. 306; 24 T. L. R. 613; 6 L. G. R. 1141; [1908] W. N. 52—C. A.**

**6. Seal—Contract with Urban District Council—Continuous Agreement—Public Health Act,**

**In General—Continued.**

1875 (38 & 39 Vict. c. 55), s. 174.]—An urban district council issued under their seal conditions in accordance with which architects were to tender designs for the erection of municipal buildings. An assessor was to select the architect whose plans he considered best. The council were not expressly bound to appoint the assessor's choice. The plaintiff was in fact selected by the assessor, and appointed by the council. He prepared plans, but the Local Government Board refused leave to borrow for the amount of the scheme. Thereupon his fees were agreed (under seal) at a certain figure. He then prepared fresh plans at less cost under instructions from the council. This scheme was never carried out, and the plaintiff sued for his fees in respect of the second set of plans, calculated on the basis of the original conditions. The defendants objected that there was no contract under seal to satisfy sect. 174 of the Public Health Act, 1875.

HELD—that these fees had been earned under a modification of the original scheme, and not under a new scheme; that the requirements as to sealing were satisfied by the original conditions of tender; and that the plaintiff was entitled to recover.

*Williams v. Barmouth Urban District Council* (1897), 77 L. T. 383 applied.

*HUNT v. ACTON URBAN DISTRICT COUNCIL*, 72 [J. P. 345; 6 L. G. R. 957—Lawrance, J.

**(f) Meetings.**

**7. Municipal Corporation—Meetings of Council—Right to Attend—Right of Burgess, Reporter and Member of the Public—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).]**—A burgess of a borough, constituted under the Municipal Corporations Act, 1882, who was the proprietor of a local newspaper, claimed the right to attend the meetings of the council of the borough.

HELD—that he had no right to attend the meetings either as burgess, reporter, or member of the public.

Decision of Kekewich, J. (72 J. P. 15; 97 L. T. 777; 24 T. L. R. 123) affirmed.

*TENBY CORPORATION v. MASON*, [1908] 1 Ch. [457; 77 L. J. Ch. 230; 72 J. P. 89; 98 L. T. 349; 24 T. L. R. 254; 6 L. G. R. 233—C. A.

**(g) Members, Officers and Servants.****(a) In General.**

**8. Police—Pension—Decision of Quarter Sessions—"Order shall be Final"—Case Stated for Opinion of High Court—Police Act, 1890 (53 & 54 Vict. c. 45), s. 11.]**—By the Police Act, 1890, sect. 11, "... Where a constable ... claims a pension ... as of right, and the police authority do not admit the claim, the constable ... may apply to the police authority for a reconsideration of the claim to the pension ... and if aggrieved by the decision upon such reconsideration may apply to ... Quarter Sessions ... and that Court, after inquiry into the case, may make such order in the matter as

appears to the Court just, which order shall be final ..."

HELD—that the High Court has no jurisdiction to entertain a special case stated by Quarter Sessions upon a point decided by them under the section.

Decision of the Court of Appeal ([1907] 2 K. B. 591; 76 L. J. K. B. 1155; 71 J. P. 409; 97 L. T. 453; 23 T. L. R. 624; 5 L. G. R. 1168) reversed.

*KYDD v. LIVERPOOL WATCH COMMITTEE* [[1908] A. C. 327; 77 L. J. K. B. 947; 72 J. P. 395; 99 L. T. 212; 24 T. L. R. 773; 52 Sol. Jo. 639; 6 L. G. R. 903—H. L.

**9. Police—Pension—Rank of "Walking Inspector."]**—The appellant was a police constable, who was appointed an inspector for the purpose of carrying out the Weights and Measures, the Sale of Food and Drugs, and the Explosives Acts. The chief constable of the county issued an order to the police force that the appellant was to be saluted and treated with the same respect as a superintendent. The appellant used to perform certain police duties independently of his duties as inspector under the above Acts, and was accustomed to visit the houses occupied by inspectors, sergeants, and constables, and examine and sign their books, and he was provided with an allowance for a horse, and with a cart or trap, which he used for the conveyance of standard weights and measures, and occasionally for other purposes.

HELD—that for the purposes of a resolution of the standing joint committee of the county fixing the scale of police pensions, it had not been shown that the appellant had a rank above that of "walking inspector."

*STORY v. NOTTINGHAMSHIRE STANDING JOINT COMMITTEE*, 72 J. P. 31; 6 L. G. R. 1018—Div. Ct.

**10. Police Pension—Superannuation—Reserve Class—Additional Remuneration—Final Retirement—Amount of Ultimate Pension—Police Act, 1890 (53 & 54 Vict. c. 45), First Sched.]**—The respondent, a sergeant in the Liverpool city police force, was superannuated and appointed to the reserve class at the pay of 27s. per week. As the result he received £73 per annum by way of "pension," and 27s. a week by way of reserve class pay.

HELD—that on his final retirement the so-called pension could not be taken into account in calculating the amount due to him by way of pension on his final retirement.

*CITY OF LIVERPOOL WATCH COMMITTEE v. KYDD*, 72 J. P. 63; 98 L. T. 24; 6 L. G. R. 907—Div. Ct.

**(b) Disqualifications.**

See also ELECTIONS, No. 1.

**11. Distress Committee—Appointment of Member of Council as Paid Officer—Voting as Member of Council—Penalty—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 46 (1) (d), (8)—Unemployed Workmen Act, 1905 (5 Edw. 7, c. 18),**

**In General—Continued.**

ss. 1 (1), 2 (1).]—A distress committee established for an urban district under the provisions of the Unemployed Workmen Act, 1905, appointed the respondent to the office of registrar and inquiry agent at a weekly salary. The respondent was, at the time of his appointment, a member of the council of the urban district, and while holding the office voted in his capacity as councillor at a meeting of the district council.

HELD—that the distress committee was a committee of the council, that the respondent held a paid office under the council, and that he had, therefore, committed an offence against sect. 46, sub-sect. 8 of the Local Government Act, 1894.

CRUMP v. LEWIS, [1908] 1 K. B. 858; 77 [L. J. K. B. 478; 72 J. P. 149; 98 L. T. 864; 24 T. L. R. 321; 52 Sol. Jo. 282; 6 L. G. R. 588—Div. Ct.

**(h) Powers.**

12. *Contribution by One Urban District Council in Support of Litigation by Another Urban District Council—Mutual Interest—Ultra Vires—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 sub-s. 1 (b).*]—A tramroad ran through three urban districts. The council of one district assessed it at its net annual value, but the Court of Appeal held that it should have been assessed as a railway at one-fourth of its net annual value. For the purpose of an appeal to the House of Lords the councils of the three districts agreed to pay the costs in the Court of Appeal and the House of Lords *pro rata*.

HELD—in an action against one of the two councils who had thus agreed to contribute to the costs of the third council's appeal, that the agreement was *ultra vires*, and an injunction was granted to restrain the defendants from carrying out the terms on their part and from any further expenditure of public money in respect thereof.

ATTORNEY-GENERAL OF THE DUCHY OF LANCASTER v. FLEETWOOD URBAN DISTRICT COUNCIL, 72 J. P. 170—Leigh-Clare, V.C.

13. *Power to Corporation to Construct Wharf—Provision that Business of Wharfinger Not to be Carried On—Letting of Land with Right to Use Wharf Free of Dues—Ultra Vires.*]—In 1896 the defendants by a private Act were empowered to construct and maintain a wharf wall and embankment 900 feet in length, but it was provided that the defendants should not carry on or permit to be carried on upon the said wharf wall and embankment the business of wharfingers or warehousemen. They subsequently constructed a wharf wall and embankment, but only 600 feet in length, there being an old quay called Moore's Wharf occupying the remaining 300 feet. Thereafter the defendants granted a lease to one V., a timber merchant, of a part of their land with the use of their wharf for the purpose of loading or unloading from or to craft timber to be dealt with by him as a timber merchant and not as a wharfinger, free of all dues or charges whatsoever. V. paid

an enhanced rent by reason of there being let to him with the land the right to use the wharf free of all dues, and on three occasions he had exercised this right for the purposes of his business, having had three barges unloaded at Moore's Wharf.

HELD—that the defendants had not by letting the land to V. on the terms above stated carried on or permitted to be carried on the business of wharfingers.

ATTORNEY-GENERAL v. PLYMOUTH CORPORATION, 72 J. P. 493; 25 T. L. R. 29; 6 L. G. R. 1154—Eady, J.

**(i) Practice.**

[No paragraphs in this vol. of the Digest.]

**(j) Tort.**

[No paragraphs in this vol. of the Digest.]

**III. BUILDINGS AND BUILDING BYE-LAWS.****(a) Building Line.**

[No paragraphs in this vol. of the Digest.]

**(b) Continuing Offence.**

[No paragraphs in this vol. of the Digest.]

**(c) Crown.**

[No paragraphs in this vol. of the Digest.]

**(d) Deposit and Approval of Plans.**

14. *Disapproval by Local Authority—Mandamus—Public Health (Buildings in Streets) Act, 1888 (51 & 52 Vict. c. 52), s. 3.*]—A prerogative writ of *mandamus* will not be granted to a local authority to approve plans which they have in good faith refused to approve on the ground that they infringe the statutory provisions as to the building line.

R. v. CHISWICK URBAN DISTRICT COUNCIL, 72 [J. P. 165; 6 L. G. R. 605—Div. Ct.

15. *Refusal to Approve Plans—Malice—Action for Damages—Mandamus.*]—An action for damages will not lie against a local authority for maliciously refusing to approve building plans.

The remedy of a builder who alleges *mala fides* is to apply for a *mandamus* to the authority to hear and determine the application.

DAVIS v. BROMLEY CORPORATION ([1908] 1 [K. B. 170; 77 L. J. K. B. 51; 71 J. P. 513; 97 L. T. 705; 24 T. L. R. 11; 5 L. G. R. 1229—C. A.

**(e) Exemptions and Dispensations.**

[No paragraphs in this vol. of the Digest.]

**(f) Floors.**

[No paragraphs in this vol. of the Digest.] •

**(g) Notice.**

[No paragraphs in this vol. of the Digest.]

**(h) Res Judicata.**

[No paragraphs in this vol. of the Digest.]

**(i) Remedies for Breach.**

16. *Railway Carriage converted into Residence—“Erection of New Building”—Power to*



**In General—Continued.**

*Demolish—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 157, 159.]*—The plaintiff purchased land on which stood an old railway carriage previously used as a refreshment room. By slight alterations he converted it into a residence in which he lived. The defendants, after serving a notice on the plaintiff which he disregarded, demolished this residence as being a new building in contravention of a bye-law made pursuant to the Public Health Act, 1875, s. 157. By sect. 159 of that Act the conversion into a dwelling-house of any building not originally constructed for human habitation is to be considered the erection of a new building. The plaintiff contended that the defendants were not justified in doing more than removing the work actually done by him in converting the railway carriage into a dwelling-house. On appeal by the plaintiff from the county court :

**HELD**—that, by sect. 159 of the Public Health Act, 1875, the conversion into a dwelling-house of such a building had the effect of making the whole building and not merely the altered part into a "new building" subject to the defendants' bye-laws.

HANRAHAN *v.* LEIGH URBAN DISTRICT [COUNCIL, 25 T. L. R. 173—Div. Ct.]

**(j) Waterworks.**

*See title WATER AND WATERWORKS.*

**(k) Words :** "New Buildings," "Building," "Sign," "Letting," etc.

**17. "Sign"—Pole Carrying Flag—Liverpool Improvement Act, 1882 (45 & 46 Vict. c. lv.), s. 36.]**—A local Act provided that it should not without the corporation's consent be lawful to "place, fix, or hang any door, shutter, trap, platform, shoot, sign, cathead, crane, hoist or other apparatus or thing in connection with any building or structure so as to project over the surface of any street."

The respondent erected an iron pole which projected through an open window and was bolted to the building; from the pole hung a canvas advertisement.

**HELD**—that the iron pole and canvas could be considered a "sign."

GOLDSTRAW *v.* JONES, 71 J. P. 22; 96 L. T. 30; [4 L. G. R. 1176; 21 Cox, C. C. 350—Div. Ct.]

**III. MISCELLANEOUS.**

**18. Expenses of Local Inquiry — Right to Recover—Proper Fees—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 72 (4).]**—A county council held an inquiry under sect. 57, sub-sect. 1 of the Local Government Act, 1888 (51 & 52 Vict. c. 41). The inquiry was conducted by a barrister, who charged certain fees for his services.

**HELD**—that these fees were to be paid by the district council under sect. 72, sub-sect. 4, of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

That a fee of ten guineas a day was a proper fee to be paid to the barrister for his services,

but that the fees of five guineas for an application in chambers and twenty guineas for his report were excessive.

MIDDLESEX COUNTY COUNCIL *v.* KINGSBURY [URBAN DISTRICT COUNCIL, 72 J. P. 322; 99 L. T. 17; 24 T. L. R. 612; 6 L. G. R. 952—Grantham, J.]

**19. Rural District Council — Documents in Possession of — Parochial Elector — Right to Inspect—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 58, sub-s. 5.]**—Proceedings having been taken by T. against E. to have it declared that no public right of way existed over certain lands, and a petition having been presented to the rural district council requesting them to take action in support of alleged public rights, the council submitted a case to counsel for his opinion. T., who was a parochial elector, then applied to the council for inspection of the petition, case and opinion. He was shown the petition, but not the two other documents. There was no litigation going on between T. and the council.

**HELD**—that in the circumstances sect. 58, sub-sect. 5 of the Local Government Act, 1894, gave T. no right to see the case and opinion.

R. *v.* BRADFORD-ON-AVON RURAL DISTRICT [COUNCIL, 72 J. P. 348; 99 L. J. 89; 6 L. G. R. 847—Div. Ct.]

**20. Rural District Council — Expenses — Apportionment Between Parishes — Appeal to Local Government Board—Proceedings for Distress Warrant—Discretion of Justices—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 229, 231.]**—A rural district council having incurred expenses in the execution of the Public Health Act, 1875, for the common benefit of several parishes within their district, and having apportioned them between the parishes and having issued a precept to the overseers of one of the parishes to pay to them the contribution of that parish, the overseers appealed to the Local Government Board against the apportionment, and the Local Government Board decided to hold an inquiry. On proceedings being taken by the council against the overseers under sect. 231 of the Public Health Act, 1875, to recover the amount of the precept, the justices adjourned the hearing pending the announcement of the decision of the Local Government Board.

**HELD**—that the justices were entitled to take into consideration the fact that an appeal to the Local Government Board was pending, and that they were not bound to issue their distress warrant till such appeal had been determined.

R. *v.* FOX AND ANOTHER; *Ex PARTE* PLYP- [TON ST. MARY RURAL DISTRICT COUNCIL, 72 J. P. 331; 99 L. T. 90; 6 L. G. R. 1068—Div. Ct.]

**LOCOMOTIVES.**

*See HIGHWAYS; RAILWAYS AND CANALS; STREET TRAFFIC.*

**LODGING HOUSES.**

See LANDLORD AND TENANT; PUBLIC HEALTH.

**LONDON.**

See METROPOLIS.

**LONDON BUILDING ACT.**

See METROPOLIS.

**LONDON, PORT OF.**

See WATERS AND WATERCOURSES; SHIPPING AND NAVIGATION.

**LORDS, APPEAL TO.**

See COURTS; PRACTICE AND PROCEDURE.

**LOTTERIES.**

See GAMING AND WAGERING.

**LOWER CANADA.**

See DEPENDENCIES AND COLONIES.

**LUNATICS AND PERSONS OF UNSOUND MIND.**

	COL.
I. SUMMARY RECEPTION ORDER	364
[No paragraphs in this vol. of the Digest.]	
II. PRACTICE	364
[No paragraphs in this vol. of the Digest.]	
III. COMMITTEE AND RECEIVER.	364
IV. VESTING ORDER	366
V. PROPERTY AND CAPACITY OF LUNATIC	366
[No paragraphs in this vol. of the Digest.]	
VI. MAINTENANCE	366
[No paragraphs in this vol. of the Digest.]	
VII. CREDITORS	366
[No paragraphs in this vol. of the Digest.]	
VIII. BREACH OF PROMISE	366
[No paragraphs in this vol. of the Digest.]	

IX. PAUPER LUNATICS . . . 366

X. FOREIGN LUNATICS . . . 366

[No paragraphs in this vol. of the Digest.]

And see AGENCY; DEEDS, No. 1; EXECUTORS; HUSBAND AND WIFE.

**I. SUMMARY RECEPTION ORDER.**

[No paragraphs in this vol. of the Digest.]

**II. PRACTICE.**

[No paragraphs in this vol. of the Digest.]

**III. COMMITTEE AND RECEIVER.**

1. *Action by Lunatic—Joinder of Committee—Special Finding—Incapable of Managing Affairs—R. S. C., Ord. 16, r. 17.*—The general rule is that where a lunatic so found sues by his committee, the latter must be joined as co-plaintiff.

*Farnham v. Milward & Co.* ([1895] 2 Ch. 730; 64 L. J. Ch. 717; 73 L. T. 231—C. A.) followed.

And the rule applies where the plaintiff has been found on inquisition to be "of unsound mind so as to be incapable of managing his affairs, but capable of managing himself and not dangerous to himself or others."

IN RE TOWNSHEND'S SETTLEMENT, LORD [TOWNSHEND v. ROBINS, [1908] 1 Ch. 201; 77 L. J. Ch. 167; 97 L. T. 884—Eady, J.]

2. *Lunatic—Life Tenant of Settled Estates—Not so Found by Inquisition—Consent of Tenant for Life to Sale by Trustees—Authority of Quasi-Committee or Receiver of Lunatic to Give Consent—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 56, sub-s. 2, and s. 53—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 116, 128.*—The consent of a tenant for life, who is a lunatic not so found, to a sale of the settled land by the trustees of the settlement estate cannot be exercised by his quasi-committee. The power of consent under sect. 56, sub-sect. 2 of the Settled Land Act, 1882, is not vested in the tenant for life in the character of a trustee, nor is it a check upon the undue exercise of the power in the trustees within the meaning of sect. 128 of the Lunacy Act, 1890.

*In re Baggs* ([1894] 2 Ch. 416 (n); 63 L. J. Ch. 612; 71 L. T. 138—C. A.) followed.

IN RE DE MOLEYNS AND HARRIS' CONTRACT, [[1908] 1 Ch. 110; 77 L. J. Ch. 9; 97 L. T. 630; 51 Sol. Jo. 824—Joyce, J.]

3. *Lunatic Not so Found—Person Appointed to Carry on his Business—Personal Liability on Contract made for the Purpose—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 116, 120, 124.*—A. E., the sole partner in a firm, became mentally enfeebled and incapable of managing his affairs, but was not a lunatic so found. The defendant was appointed under sect. 116, sub-sect. 1 (d), and sect. 120 of the Lunacy Act, 1890, to exercise the powers of a committee of his estate and to carry on the business. In the course of carrying on the business goods were supplied by the plaintiffs to the business. In an action against the defendant to recover the price of the goods so supplied :—

**Committee and Receiver—Continued.**

**HELD**—that, in the absence of any evidence that the defendant undertook a personal liability for the price of the goods supplied, the mere fact that he carried on the business under the order did not render him personally liable.

*Burt Boulton and Hayward v. Bull* ([1895] 1 Q. B. 276; 64 L. J. Q. B. 232; 71 L. T. 810; 43 W. R. 180; 2 Manson, 94—C. A.) and *Owen v. Cronk* ([1895] 1 Q. B. 265; 64 L. J. Q. B. 288; 2 Manson, 115—C. A.) considered.

**PLUMPTON AND ANOTHER v. BURKINSHAW**, [1908] 2 K. B. 572; 77 L. J. K. B. 961; 99 L. T. 415; 24 T. L. R. 642; 52 Sol. Jo. 533—C. A.

**4. Person Incapable of Managing her Affairs—Management and Administration—Stocks in Books of Bank of England—Dividends—Order for Payment of to Receiver—Practice—Particulars to be included in Order—Lunacy Act, 1890 (53 Vict. c. 5), s. 116.**—Where a receiver is appointed to receive the dividends of a person unable to manage her own affairs, the practice, so far as stocks standing in the books of the Bank of England are concerned, is to order the stocks to be transferred into Court into the name of the Paymaster-General, and to let the receiver claim the dividends from him. There is indeed power to order payment to the receiver without such a transfer, but, *semble*, this will seldom, if ever, be done.

*Re Brown* ([1894] 3 Ch. 412; 63 L. J. Ch. 729; 71 L. T. 365; 43 W. R. 175—C. A.) followed.

An order directing dividends to be paid to a receiver should not be vague and general, but should specify the stocks referred to by means of a schedule.

**RE AUCHMUTY**, 99 L. T. 462—C. A.

**5. Person of Unsound Mind Not so Found—Order for Receiver to Receive and Give Discharge for Dividends, etc.—Practice—Lunacy Act, 1890 (53 Vict. c. 5), ss. 116, 333.**—By an order in lunacy a receiver was authorised to receive and give a discharge for all dividends to which S., a person of unsound mind not so found by inquisition, might be or become entitled. The Bank of England, under whose control some of S.'s stocks were, objected to comply with the order on the grounds that the proper practice as established by *Re Auchmuty* (*supra*) was to order lodgment of the accrued dividends due to the date of lodgment in Court, that the order should be mandatory in form, and that it should be unconditional and complete in itself.

**HELD**—that the first objection was untenable, as words to the same effect as in the present order had been deliberately inserted in an order made in the presence of the bank in *Re Sherwell* (not reported); that the effect of the order, though not mandatory in form, was to give to the bank the indemnity provided by sect. 333 of the Lunacy Act, 1890; and that the order was in accordance with the settled practice in lunacy, which ought not now to be disturbed.

<sup>1</sup>**N RE SPURLING**, 126 L. T. Jo. 143—C. A.

**IV. VESTING ORDER.**

**6. Practice Note.**—Upon application to vest or procure the conveyance or transfer of outstanding property in or to trustees, it is not necessary, unless in any particular case the Court otherwise directs, to deduce the beneficial title to the property or to serve beneficiaries.

Orders in Lunacy for vesting or appointing a person to convey or transfer any property are to be drawn in the form employed for similar orders in the Chancery Division, and schedules and any other devices may be employed for shortening orders.

**PRACTICE NOTE**, [1908] W. N. 75.

**V. PROPERTY AND CAPACITY OF LUNATIC.**

[No paragraphs in this vol. of the Digest.]

**VI. MAINTENANCE.**

[No paragraphs in this vol. of the Digest.]

**VII. CREDITORS.**

[No paragraphs in this vol. of the Digest.]

**VIII. BREACH OF PROMISE.**

[No paragraphs in this vol. of the Digest.]

**IX. PAUPER LUNATICS.**

**7. Expenses of Certifying—“Reasonable Remuneration” to Medical Man—Loss of Time—Expenses of Removal—Lunacy Act, 1890 (53 Vict. c. 5), s. 285 (1).**

**HELD**, upon the construction of a section in an Irish Act corresponding to sect. 285 (1) of the Lunacy Act, 1890, that—

(1) The words “other reasonable expenses” include expenses of a conveyance for the lunatic provided by the police; and

(2) That the remuneration awarded to a medical man must be for “professional services” only and not for “loss of time.”

**R. v. DELVIN UNION**, [1908] 2 I. R. 15—[K. B. D.]

**X. FOREIGN LUNATICS.**

[No paragraphs in this vol. of the Digest.]

**MACHINERY.**

*See* **FACTORIES AND WORKSHOPS; NEGLIGENCE; RATES AND RATING.**

**MAGISTRATES.**

	COL.
I. DISQUALIFICATION OF JUSTICES	367
II. JURISDICTION AND POWERS OF JUSTICES	367
III. PROCEDURE	369
IV. APPEALS.	
(a) To Quarter Sessions	370
(b) By Special Case	372
V. ACTIONS AGAINST MAGISTRATES	373
<i>See also</i> <b>CROWN PRACTICE, No. 1; POOR LAW (OVERSEERS),</b>	



## I. DISQUALIFICATION OF JUSTICES.

See also JUDGES, No. 1.

1. *Bias—Rating Appeal—Interest as Trustees—Adjudication by Justices who are Landlords of Appellants.*—A tramway company appealed against a poor rate to Middlesex Quarter Sessions. Some of the justices who were members of the Court of Quarter Sessions were also members of the Middlesex County Council, who were the owners of the tramways and had leased them to the tramway company on the terms that the council were to receive (*inter alia*) 45 per cent. of the net revenue of the tramway company.

HELD—that the justices who were members of the county council, being mere trustees for the ratepayers, were not disqualified from adjudicating by interest, and that on the facts proved the allegation that there would be in the minds of reasonable people a possibility of bias had not been made out.

R. v. MIDDLESEX JUSTICES, 72 J. P. 251; 52 [Sol. Jo. 458; 6 L. G. R. 739—Div. Ct.

2. *Bias—Rating Appeal—Justice Member of an Assessment Committee.*—One of the justices who sat at Quarter Sessions upon the hearing of appeals by a gas company against assessments made by certain assessment committees in the county of London was chairman of another assessment committee in the county of London, in whose area the gas company neither owned nor occupied property.

HELD—that the justice was not by that circumstance disqualified from sitting.

The question of whether a justice is disqualified is one of degree which must be decided separately in each case.

*Quære*, whether if the particular experience of the justice as chairman of an assessment committee was such that he had dealt with and expressed an opinion upon the identical questions which arose upon the appeal, there might not be such a suspicion of bias as would disqualify him from sitting.

Decision of Div. Ct. (71 J. P. 476; 97 L. T. 716; 23 T. L. R. 726; 5 L. G. R. 1064)—affirmed.

R. v. LONDON JUSTICES, EX PARTE SOUTH [METROPOLITAN GAS CO., 72 J. P. 137; 98 L. T. 519; 24 T. L. R. 274; 6 L. G. R. 324; 52 Sol. Jo. 238—C. A.

## II. JURISDICTION AND POWERS OF JUSTICES.

3. *Adjournment—Power to Adjourn Indictable Case—Charge of Libel—Prospect of Settlement—Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 21.*—Upon a summons for libel if an apology and settlement are in prospect and are likely to be facilitated by an adjournment, the justices have power to adjourn the case for more than eight days if the defendant has never surrendered to, or been detained in custody, provided that they do not decline to exercise

jurisdiction and do not take extra-judicial matters into consideration.

R. v. SOUTHAMPTON JUSTICES, EX PARTE [LEBERN, 71 J. P. 332; 96 L. T. 697; 21 Cox, C. C. 431—Div. Ct.

4. *Application for Summons—Discretion to Grant—Matters Proper to be Taken into Consideration—Existence of Civil Remedy—Mandamus.*—An application was made to a magistrate on behalf of a man named Bennet to issue a warrant against a man named Bond for an alleged false and defamatory libel said to have been published by Bond concerning Bennet. The magistrate granted a warrant for Bond's arrest, and Bond was arrested and brought before the magistrate two days later. Neither the prosecutor nor anyone on his behalf appeared on the case being called, and the magistrate having satisfied himself by inquiry that the prosecution had full knowledge of the time of the proceedings, discharged Bond from custody. Five days later an application was made to the magistrate on behalf of Bennet to grant him a summons against Bond upon the same matter, it being stated that the absence of the prosecution on the previous occasion was due to the fact that it was understood from the police that their attendance would be unnecessary, that a remand would be asked for, and that the case would be fully heard upon the remand date. The police officer in the case, however, informed the magistrate that no such statement was made by him to the prosecutor or his solicitor. The magistrate was of opinion that the police had no right to assure any prosecutor that his attendance was unnecessary, and that a solicitor had no right to accept such an assurance, even if it was given, and he therefore refused to grant the summons, and stated that as the applicant had applied for and obtained a warrant, but had not chosen to appear in support of the charge, he would exercise his discretion and refuse the applicant any further process for the purpose of re-opening the matter. Further, he pointed out that the applicant had a civil remedy, and this strengthened the magistrate in the view that he would not be justified in granting to the applicant any further criminal process in the matter.

HELD—that the magistrate had taken into consideration matters which he could not properly consider in exercising his discretion; that he had, therefore, not exercised a judicial discretion, and a *mandamus* must issue to the magistrate to hear and determine the application for a summons according to law.

R. v. BENNETT, 72 J. P. 362; 24 T. L. R. 681; 52 [Sol. Jo. 583—Div. Ct.

5. *Recognisance—Binding Over to Keep the Peace—No Cross-Summons—Power to Bind Over Complainant as well as Defendant—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 25.*—A complainant took out a summons for an order binding the defendant over to keep the peace, and the justices, on it appearing to them that the complainant had himself used towards the defendant threats calculated to lead to a breach of the peace, and that there was a real danger of a breach of the peace on the part of

**Jurisdiction and Powers of Justices—Continued.**

both complainant and defendant, bound over both parties to keep the peace.

**HELD**—that the Court would not, on the application of the complainant, quash the order against him on the ground that no information was laid or summons issued against him, the Court being satisfied that before the making of the order the complainant had notice as to what the result of the proceedings would probably be, nor would it quash the order on the ground that it did not allege that the defendant stated on oath that he went in bodily fear, since the recognisance had been entered into by the complainant without protest.

**R. v. WILKINS AND OTHERS**, [1907] 2 K. B. [380; 76 L. J. K. B. 722; 71 J. P. 327; 96 L. T. 721; 21 Cox, C. C. 443—Div. Ct.

**6. Warrant—Power of Withdrawal—Mandamus.**—A warrant was granted by a magistrate for the arrest of a Mrs. C. and two other persons for conspiring to abduct a child of Mrs. C.'s out of the custody of its appointed guardian. The warrant was never executed against Mrs. C. because of her absence abroad, but the two others were arrested and tried, and one of them was convicted. On an application to the magistrate to withdraw the warrant against Mrs. C. he declined to do so.

**HELD**, on the facts—that, assuming the magistrate had power, in the exercise of his discretion, to withdraw the warrant, he had exercised his discretion judicially.

**HELD, ALSO**, per Darling, J. (and *semble*, per Alverstone, L.C.J.)—that the King's Bench Division has power to issue a *mandamus* ordering a magistrate to withdraw a warrant if it is plain that he has granted it for the arrest of a person for something which is not an offence and for which the person could not be convicted.

*Sed quære*, whether a magistrate, unless so ordered, has power to withdraw a warrant when once he has granted it.

**R. v. CROSSMAN**, 72 J. P. 250; 98 L. T. 760; 24 [T. L. R. 517—Div. Ct.

**III. PROCEDURE.**

**7. Decision of Majority—No Poll Taken.**—On the hearing of an appeal at Quarter Sessions there were twenty-five Justices present. At the close of the case, on the Chairman remarking that they were unanimous, two justices expressed their dissent. Thereupon the Chairman in open Court asked those who were for reversing the order to stand up, and nine stood up. The Chairman, without calling upon those who were for affirming to formally signify their opinions, declared that a large majority of the Justices were for affirming the order of the Petty Sessions.

**HELD**—that the method adopted by the Chairman of taking the opinion of the Justices was both legal and adequate.

**R. v. TYRONE JUSTICES**, [1908] 2 I. R. 124—[C. A.

**8. Variance Between Information and Conviction—Form of Conviction—Seals of Justices—Power of Amendment—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), ss. 1, 14—Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), s. 7.]—On an information and summons charging the defendant with unlawfully exposing to view in a window a certain indecent exhibition, this being an offence for which a penalty of 40s. may be imposed under sect. 28 of the Town Police Clauses Act, 1847, it was stated on behalf of the prosecution at the hearing that the proceedings were taken under the Vagrancy Act, 1824, under which, as amended by sect. 2 of the Vagrancy Act, 1838, the offence of "wilfully" exposing such an exhibition to public view in the window of any shop, situate in any street, is punishable with a fine of £25, but objection was not taken before the Justices on behalf of the defendant to the absence of the word "wilfully" from the summons. The Justices convicted the defendant of "wilfully" exposing an indecent exhibition to public view, and fined him £20, and signed the conviction but did not seal it with their seals.**

**HELD**—that the Court would not quash the conviction, as the objection was not taken at the hearing, and no information is necessary if the defendant is before the Justices, and as the Court had power under the Quarter Sessions Act, 1849, sect. 7, to amend the conviction with regard to the omission of the seals of the Justices.

**R. v. TABRUM AND ANOTHER**, 71 J. P. 325; 97 [L. T. 551; 23 T. L. R. 474; 21 Cox, C. C. 529—Div. Ct.

**IV. APPEALS.****(a) To Quarter Sessions.**

**9. Right of Appeal—Dismissal of Information—Bradford Tramways and Improvement Act, 1897 (60 & 61 Vict. c. cclx.), s. 66.]—An officer of the B. Corporation summoned a manufacturing company for allowing liquid refuse to flow into a sewer contrary to sect. 45 of the B. Tramways and Improvement Act, 1897. The summons having been dismissed, the corporation gave notice of appeal to the B. Quarter Sessions, claiming a right of appeal under sect. 66 of the B. Tramways and Improvement Act, 1897, which provides that any person deeming himself aggrieved by any conviction or order made by a Court of summary jurisdiction under any provision of the Act may appeal to Quarter Sessions according to the provisions of the Summary Jurisdiction Acts, and that in regard to any such order the corporation may in like manner appeal. The recorder held that the appeal was an appeal against the dismissal of an information, and that inasmuch as the corporation were, in consequence of such dismissal, not persons deeming themselves aggrieved, sect. 66 did not confer upon them any right of appeal.**

**HELD**—that the words "the corporation may in like manner appeal" referred back, not merely to the machinery of the Summary Jurisdiction Acts but also to the words "any person deeming himself aggrieved," and, therefore, did not give



**Appeals—Continued.**

the corporation a right of appeal against the dismissal of an information.

*R. v. London Justices* ((1890) 25 Q. B. D. 357; 59 L. J. M. C. 146; 55 J. P. 56—Div. Ct.) applied.

*R. v. WRIGHT, EX PARTE BRADFORD CORPORATION*, 72 J. P. 23; 6 L. G. R. 89—Div. Ct.

**10. Right of Appeal—Implication—Sale of Food and Drugs Act, 1899** (62 & 63 Vict. c. 51), ss. 1, 25.—There is no right of appeal to Quarter Sessions against a conviction under sect. 1 of the Sale of Food and Drugs Act, 1899, for importing margarine in a package not properly marked.

So held by Darling and Ridley, JJ., Bray, J. dissenting.

*R. v. OTTO MONSTED, LD.*, [1906] 2 K. B. 456; [75 L. J. K. B. 629; 70 J. P. 435; 95 L. T. 526; 4 L. G. R. 942; 21 Cox, C. C. 289—Div. Ct.

**11. Right of Appeal—Right Governed by Amount of Fine—Increasing Fine so as to allow Appeal—Impropriety of.**—It is not a proper practice for justices to increase the amount of a fine imposed by them in order to enable the defendant to appeal.

*EX PARTE HOBICK*, 24 T. L. R. 747—Div. Ct.

**12. Practice on Appeal—Respite—Waiver of Preliminary Objections.**—If respondents to an appeal at Quarter Sessions apply for a respite, they thereby waive their right to take certain preliminary objections which go to the root of the Court's jurisdiction to hear the appeal.

So held as to an objection that in a rating appeal there had been no sufficient complaint to the assessment committee prior to the notice of appeal.

*RHONDA VALLEY BREWERIES CO. v. PONTY-PRIDD UNION ASSESSMENT COMMITTEE*, 72 J. P. 365; 98 L. T. 647—Div. Ct.

**13. Quarter Sessions—Special Case from—Decision of Quarter Sessions—“Order shall be Final”—Case Stated for Opinion of High Court—Police Act, 1890** (53 & 54 Vict. c. 45), s. 11.—By the Police Act, 1890, sect. 11, “. . . Where a constable . . . a pension . . . as of right, and the police authority do not admit the claim, the constable . . . may apply to the police authority for a reconsideration of the claim to the pension and if aggrieved by the decision upon such reconsiderations may apply to . . . Quarter Sessions . . . and that Court, after inquiry into the case, may make such order in the matter as appears to the Court just, which order shall be final . . . .”

**HELD**—that the High Court has no jurisdiction to entertain a special case stated by Quarter Sessions upon a point decided by them under the section.

Decision of the Court of Appeal reversed ([1907] 2 K. B. 591; 76 L. J. K. B. 1155; 71 J. P. 409; 97 L. T. 453; 32 T. L. R. 624; 549 R. 1168.

*KYDD v. LIVERPOOL WATCH COMMITTEE*, [1908] A. C. 327; 77 L. J. K. B. 947; 72 J. P.

395; 99 L. T. 212; 24 T. L. R. 773; 52 Sol. Jo. 639; 6 L. G. R. 903—H. L.

**14. Quarter Sessions—Special Case from—Point not taken in Court below.**—A special case from Quarter Sessions may be so stated as to render it necessary for the Divisional Court to decide a point not raised in the Court below, although the general rule is that only points so raised are open for argument.

*SMITH'S DOCK CO., LD. v. TYNEMOUTH CORPORATION*, [1908] 1 K. B. 315—Div. Ct.

**15. Quarter Sessions—Special Case from—Time for Filing—Crown Office Rules, 1906, r. 25.**—The effect of rule 25 of the Crown Office Rules, 1906, is that a special case stated by Quarter Sessions may be filed at any time within six calendar months from the making of the order or determination of Quarter Sessions, notwithstanding a provision (such as that in sect. 40 of the Valuation Metropolis Act, 1869) requiring a *certiorari* (necessary before 1879 when Quarter Sessions stated a special case) to be moved for within three months.

*HORNER v. STEPNEY UNION ASSESSMENT COMMITTEE*, 72 J. P. 262; 98 L. T. 450; 24 T. L. R. 500; 6 L. G. R. 651; [1908] W. N. 101—Div. Ct.

**(b) By Special Case.**

**16. Mandamus to State a Case—Proper Remedy certiorari—Dogs Act, 1871** (34 & 35 Vict. c. 56), s. 2.—Justices made an order under sect. 2 of the Dogs Act, 1871, that a certain dog, being dangerous, “should be kept under proper control and led by a leash by day and chained up by night.”

On motion to make absolute a rule for a *mandamus* to the justices to state a case as to whether they had power to specify the manner of control, the Court, considering that the point could have been more conveniently raised by *certiorari*, discharged the rule.

*R. v. OWEN*, 72 J. P. 60; 52 Sol. Jo. 132—Div. Ct.

**17. Practice—Application to State Case—Summary Jurisdiction Act, 1879** (42 & 43 Vict. c. 49), s. 33 (2)—*Summary Jurisdiction Rules, 1886, r. 18.*—On the conviction, on September 21st, 1906, of a publican for an offence against the licensing laws, the justices orally agreed to state a case, and his solicitor on September 26th, 1906, served them with copies of a written application requesting them to do so, and left with the assistant clerk to the justices a copy addressed to the clerk of the justices. On October 8th, 1906, the justices refused to take the necessary recognisances and to state the case, on the ground that the written application had not been served in accordance with rule 18 of the Summary Jurisdiction Rules, 1886, which requires that there shall be left with the clerk a copy for each of the justices which shall be duly forwarded to them by him.

**HELD**—that the rule had been sufficiently



**Appeals—Continued.**

complied with, and that the justices must be ordered to state a case.

R. v. WOODCOCK AND OTHERS, [1907] 2 K. B. [104; 76 L. J. K. B. 683; 71 J. P. 241; 96 L. T. 672; 21 Cox, C. C. 429—Div. Ct.

18. *Right of Appeal*—“*Decision shall be Final*”—Act passed since 1879.]—Where an Act passed subsequently to the Summary Jurisdiction Act, 1879, provides that the decision of justices upon any point shall be final, an appeal will not lie from their decision by way of a special case.

Decision of C. A. ([1907] 1 K. B. 910; 76 L. J. K. B. 482; 71 J. P. 200; 96 L. T. 535; 23 T. L. R. 387; 5 L. G. R. 545) affirmed.

WESTMINSTER CORPORATION v. GORDON [HOTELS, LTD., [1908] A. C. 142; 77 L. J. K. B. 520; 72 J. P. 201; 98 L. T. 681; 24 T. L. R. 402; 52 Sol. Jo. 334; 6 L. G. R. 520—H. L.

**V. ACTIONS AGAINST MAGISTRATES.**

19. *Action against—Issue of Search Warrant—Delivery of Possession—Trove and Conversion—Court of Summary Jurisdiction.*]—In the course of a family dispute as to the ownership of a farm Q. and others, who were living in the farmhouse, reaped and stored in a room in the house a quantity of barley which had been sown by B., whereupon B. swore an information to the effect that Q. and the others had stolen the barley, on which S., a justice, issued a search warrant. Upon the barley being found in the house, Q. and the others were arrested by the police and brought before S. and P., justices, sitting in the day-room of a police barrack, and were committed for trial. Afterwards, in the absence of Q. and the others, the two justices, purporting to act under sect. 1 of the Police Property Act, 1897, made an order to the police, who had taken possession of the barley, to deliver it to B., which was done.

HELD—that the two justices sitting in the day-room of the police barrack were not a “Court of Summary Jurisdiction” for the purposes of sect. 1 of the Act of 1897; that the proceeding in which the order to deliver the barley was made was therefore *coram non iudice*; and their act in making the order was one within sect. 2 of the Justices Protection (Ireland) Act, 1849 [cf. sect. 2 of the Justices Protection Act, 1848], which entitled Q. to maintain an action against the justices without proof of malice.

HELD ALSO—that there was no jurisdiction to make the order without the parties interested being present or summoned to attend.

HELD FURTHER—that the seizure of the barley under the search warrant, and the *custodia legis* thereby established, did not deprive Q. of a possession of the barley sufficient to entitle him to maintain an action of trover against the justices.

QUINN v. PRATT, [1908] 2 I. R. 69.—K. B. D.

**MAIN ROADS.**

See HIGHWAYS.

**MAINTENANCE.**

See ACTION; BASTARDY; HUSBAND AND WIFE; POOR LAW; WILLS.

**MALICIOUS DAMAGE.**

See CRIMINAL LAW.

**MALICIOUS PROSECUTION AND PROCEDURE.**

And see HUSBAND AND WIFE, No. 18.

1. *Instituting the Prosecution—Giving Information to Police—Mala fide Information.*]—If a complainant does not go beyond giving what he believes to be correct information to the police, and the police, without further interference on his part (except giving such honest assistance as the police may require), think fit to prosecute, he is not responsible in an action for malicious prosecution; but if the charge is false to the knowledge of the complainant, if he misleads the police by bringing suborned witnesses to support it, if he influences the police to assist him in sending an innocent man for trial, he cannot escape liability because the prosecution has not technically been conducted by him.

PANDIT GAYA PARSHAD TEWARI v. SARDAR [BHAGAT SINGH, 24 T. L. R. 884—P. C.

**MANDAMUS.**

See CROWN PRACTICE.

**MANITOBA.**

See DEPENDENCIES AND COLONIES.

**MANOR.**

See COPYHOLDS AND MANORS.

**MANSLAUGHTER.**

See CRIMINAL LAW AND PROCEDURE.

## MARGARINE.

See FOOD AND DRUGS.

## MARINE INSURANCE.

See INSURANCE.

## MARITIME LIENS.

See SHIPPING AND NAVIGATION.

## MARKET GARDENS.

See AGRICULTURE.

## MARKETS AND FAIRS.

COL.

I. IN GENERAL . . . . .	375
II. TOLLS . . . . .	376
[No paragraphs in this vol. of the Digest.]	
III. HAWKERS . . . . .	376
[No paragraphs in this vol. of the Digest.]	

### I. IN GENERAL.

1. *Manorial Market—Not limited by Metes and Bounds—Extent—New Streets—Dedication Subject to Market Rights—Presumption.*—From time immemorial the lord of the manor of Stepney had held a hay and straw market in High Street, Whitechapel; and there was evidence that when High Street was overcrowded adjoining streets were also used for the market. After 1840 two narrow streets were widened and made into new streets by the Commissioners of Woods and Forests, under the powers of the Metropolis Improvement (Additional Thoroughfares) Act, 1840. In 1870 an entirely new street was cut through private property by the Metropolitan Board of Works, under the powers of the Whitechapel and Holborn Improvement Act, 1865. These Acts did not refer to the market rights, but the market was in fact held in the new streets shortly after they were made, as well as in the High Street. Certain railway and tramway Acts contained provisions for the protection of the market in the several streets. It was admitted that the market was without metes and bounds, and that the area of the market franchise extended to the whole manor.

HELD, by Vaughan Williams and Buckley, L. JJ., that the new streets must be presumed to have been dedicated to the public subject to the market franchise, and that therefore certain

regulations made by the defendants, excluding carts and waggons from those streets and restricting the market to certain other streets, were invalid.

Per Fletcher Moulton, L. J.: Upon the evidence the market was confined to High Street, and the dedication of the new streets was absolute.

Decision of Eady, J. ([1906] 2 K. B. 468; 75 L. J. K. B. 777; 70 J. P. 503; 95 L. T. 146; 22 T. L. R. 688; 4 L. G. R. 1092) affirmed.

GINGELL, SON, AND FOSKETT, LD. v. STEPNEY [BOROUGH COUNCIL, [1908] 1 K. B. 115; 77 L. J. K. B. 347; 71 J. P. 486; 97 L. T. 599; 23 T. L. R. 759; 24 T. L. R. 148; 6 L. G. R. 180—C. A.

### II. TOLLS.

[No paragraphs in this vol. of the Digest.]

### III. HAWKERS.

[No paragraphs in this vol. of the Digest.]

## MARRIAGE.

See HUSBAND AND WIFE.

## MARRIAGE, PROOF OF.

See EVIDENCE.

## MARRIAGE SETTLEMENTS.

See CONFLICT OF LAWS; SETTLEMENTS.

## MARRIED WOMAN.

See BANKRUPTCY AND INSOLVENCY; HUSBAND AND WIFE.

## MARSHALLING ASSETS AND SECURITIES.

See BANKRUPTCY AND INSOLVENCY; EXECUTORS AND ADMINISTRATORS.

## MARTIAL LAW.

See ROYAL FORCES.

**MASTER AND SERVANT.**

COL.

**I. LIABILITY OF MASTER FOR INJURY****TO SERVANT****1. Under Workmen's Compensation Acts, 1897 and 1900** . . . 378

(a) Accident . . . 378

(b) Alternative remedies . . . 380

(c) Ancillary or Incidental Work . . . 381

[No paragraphs in this vol. of the Digest.]

(d) Assessment of Compensation

(1) *Difference in Wages or Earning Capacity* . . . 381(2) *Extras, Deductions and Apportionment* . . . 382

[No paragraphs in this vol. of the Digest.]

(3) *Length and Continuity of Employment* . . . 382(4) *General* . . . 383

(e) Commencement of Proceedings: Claim, Notice, Dispute . . . 384

(f) Dependents . . . 384

(g) Indemnity . . . 386

[No paragraphs in this vol. of the Digest.]

(h) Jurisdiction . . . 386

[No paragraphs in this vol. of the Digest.]

(i) Medical Examination . . . 386

[No paragraphs in this vol. of the Digest.]

(j) On, in or about . . . 386

(1) *Agriculture* . . .

[No paragraphs in this vol. of the Digest.]

(2) *Buildings (Statutory)* . . . 386

[No paragraphs in this vol. of the Digest.]

(A) *Construction and Repair* . . . 386

[No paragraphs in this vol. of the Digest.]

(B) *Exceeding 30 feet* . . . 387

[No paragraphs in this vol. of the Digest.]

(C) *Scaffolding* . . . 387

[No paragraphs in this vol. of the Digest.]

(3) *Engineering Work* . . . 387

[No paragraphs in this vol. of the Digest.]

(4) *Factory* . . . 387

[No paragraphs in this vol. of the Digest.]

(A) *Dock, Wharf, Quay* . . . 387(B) *Warehouse, Machinery, Plant, &c.* . . . 387(5) *Mine* . . . 387

[No paragraphs in this vol. of the Digest.]

(6) *Railway* . . . 387

[No paragraphs in this vol. of the Digest.]

(k) Out of and in the Course of Employment . . . 387

(l) Practice . . . 392

(1) *Appeals and New Trials* . . . 392(2) *Costs* . . . 392

[No paragraphs in this vol. of the Digest.]

**I. Liability of Master for Injury to Servant—Continued.****1. Under Workmen's Compensation Acts, 1897 and 1900—Continued.**

COL.

(m) Redemption of Payment . . . 392

[No paragraphs in this vol. of the Digest.]

(n) Registration of Agreement . . . 392

(o) Reviewing Award . . . 393

(p) Serious and Wilful Misconduct . . . 394

(q) Undertakers . . . 395

(r) Workman . . . 396

(s) Contracting Out . . . 399

**2. Under Employers' Liability Act, 1880** . . . 400**3. Apart from Workmen's Compensation and Employers' Liability Acts** . . . 401**II. LIABILITY OF MASTER FOR INJURY BY SERVANT: SCOPE OF AUTHORITY** . . . 403**III. CONTRACTS BETWEEN MASTER AND SERVANT NOT RELATING TO PERSONAL INJURIES** . . . 403**IV. DISMISSAL** . . . 404**V. WAGES: TRUCK ACTS** . . . 404**VI. SEDUCTION OF SERVANT** . . . 405

[No paragraphs in this vol. of the Digest.]

**VII. APPRENTICES** . . . 405*And see BANKRUPTCY; CRIMINAL LAW, Nos. 19, 45; EVIDENCE; NEGLIGENCE; PATENTS; PRESS AND PRINTING, Nos. 1, 3; SHIPPING; TRESPASS.***I. LIABILITY OF MASTER FOR INJURY TO SERVANT.****1. Under Workmen's Compensation Acts, 1897 and 1900.****(a) Accident.**

**1. Disease—Cerebral Hæmorrhage—Caused by Exertion—Paralysis Resulting—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.]—**A workman who was in a bad state of health, and whose arteries were diseased, had an attack of cerebral hæmorrhage, caused by his exertions in moving a weight. Paralysis supervened.

**HELD—**that his disablement was due to an "accident."

**M'INNES v. DUNSMUIR AND JACKSON, [1908]**  
[S. C. 1021—Ct. of Sess.]

**2. Disease—"Lead Poisoning or its Sequelæ"—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 8, sub-s. 1, 2, Sched. 3.]—**Sect. 8 and Sched. 3 of the Workmen's Compensation Act, 1906, brings "lead poisoning or its sequelæ" within the term "accident" in the Act. A workman, who was employed for many years as a painter, died from granular kidney. This disease was a sequela of lead poisoning, but it was also a sequela of gout, alcoholism, heart pressure, and other complaints. In proceedings



**Liability of Master for Injury to Servant.—***Continued.*

for the assessment of compensation under the Act, it was not proved that lead poisoning was the cause of the granular kidney, but the employers did not prove that it was not the cause.

**HELD**—that it was not proved that death was caused by "lead poisoning or its sequelæ," and the employers were not liable to pay compensation.

When once it is proved that the death or disablement has been caused by a disease mentioned in the first column of Sched. 3 of the Act, and that the workman was employed in a process mentioned in the second column, then by sect. 8, sub-sect. 2, the burden is on the employer of proving that the disease was not due to the nature of the employment. But sub-sect. 2 has no application until it is shown that the case is within sub-sect. 1.

**HAYLETT v. VIGOR & Co.**, [1908] 2 K. B. 837; [77 L. J. K. B. 1132; 24 T. L. R. 885; 72 Sol. Jo. 741—C. A.]

**3. Suicide—Previous Accident inducing Suicide—Claim for Compensation—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-s. 1.]**—A workman who had already lost one eye in the course of his work, received an injury to his other eye. As a result the sight of that eye began to fail, and eventually he became almost blind; owing (it was alleged) to the gradual loss of sight in his right eye and consequent blindness, his mind became affected and he became insane and committed suicide.

**HELD**—that it could not be said as a matter of law that a claim setting out the above facts was irrelevant.

**MALONE v. CAYZER, IRVINE & Co.**, [1908] S. C. [479; 45 Sc. L. R. 351—Ct. of Sess.]

**4. Heat Stroke—Trimmer on Steamer—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.]**—A workman, who was in a very emaciated condition, was engaged as a trimmer on board a steamer. He had never been employed as a trimmer before. While working in the stokehold, where the ventilation was in good working order and the temperature was 96 degrees, he fell down in a faint as the result of a heat stroke, and died.

**HELD**, by Lord Loreburn, L. C. and Lord Ashbourne, Lord Macnaghten dissenting—that the workman died from personal injury by "accident" arising out of and in the course of his employment, and that therefore the employers were liable under the Workmen's Compensation Act, 1906.

**ISMAY, IMRIE & Co. v. WILLIAMSON**, [1908] [A. C. 437; 77 L. J. P. C. 107; 99 L. T. 595; 24 T. L. R. 881; 52 Sol. Jo. 713—H. L.]

**5. Sewer Gas Poisoning—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]**—A workman was employed by a sanitary authority in the sewers under their control, and, while so employed, he contracted enteritis by inhaling sewer gas.

**HELD**—that the injury was not caused by "accident" within the meaning of sect. 1 of the Workmen's Compensation Act, 1906.

**BRODERICK v. LONDON COUNTY COUNCIL**, [1908] [2 K. B. 807; 77 L. J. K. B. 1127; 99 L. T. 569; 24 T. L. R. 822—C. A.]

**(b) Alternative Remedies.**

**6. Election—Election Inferred from Acceptance of Weekly Payments—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37) s. 1 (2) (b).]**—In defence to an action for damages at common law for personal injuries, the master pleaded that the action was barred by sect. 1, sub-sect. 2 (b) of the Workmen's Compensation Act, 1897, the workman having elected to take compensation under the Act. At the end of the week in which he was injured the workman was paid a sum in lieu of wages, and was told that for the next two weeks he would get nothing, but that after that he would be paid half wages. Subsequently, for a period of about six months, he received each week a sum amounting to slightly more than half his average weekly wage. These payments were at first made at his house, but afterwards, when he had partially recovered, he called for them regularly at his employer's office. No receipts were taken for these payments.

**HELD**—that he had elected to accept, and had accepted, compensation under the Workmen's Compensation Act, and was barred from maintaining an action.

**MACKAY v. ROSIE**, [1908] S. C. 174—Ct. of [Sess.]

**7. Remedy against both Employer and Stranger—Election—"Circumstances Creating a Legal Liability"—"Proceedings"—"Recover"—Compensation—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 6 (1).]**—An injured workman made a claim on a stranger whom he alleged to be liable to him on the ground of negligence. He received various payments in satisfaction of his claim and never actually took legal proceedings; the stranger never admitted legal liability.

**HELD**—that sect. 6 (1) precluded the workman from also making a claim against his employer.

Circumstances which are alleged to create a legal liability are "circumstances creating a legal liability" within sect. 6 (1).

Compensation is "recovered" even though no actual proceedings are necessary.

"Proceedings" in that section is not confined to legal proceedings.

**PAGE v. BURTWELL**, [1908] 2 K. B. 758; 77 [L. J. K. B. 1061; 99 L. T. 542—C. A.]

**7a. Unsuccessful Action by Workman for Damages at Common Law—Verdict for Employers—Application to Judge to Assess Compensation—Workmen's Compensation Act, 1897 (60 & 61 Vict., c. 37), s. 1, sub-s. 4.]**—A workman sued his employers in the High Court for damages for injuries caused to him by the alleged negligence of the defendants. The jury having returned a verdict for the defendants, the plaintiff applied to the Judge to assess compen-

**Liability of Master for Injury to Servant—**  
*Continued.*

sation under the Workmen's Compensation Act, 1897.

**HELD**—that an award of compensation should be made, but the costs occasioned by bringing the action would be deducted from the amount payable to the workman.

**COHEN v. SEABROOK BROTHERS**, 25 T. L. R. [176—Div. Ct.]

**8. Unsuccessful Action at Common Law—Not Commenced within Six Months of Injury—No Power to Assess Compensation after Trial—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1, sub-ss. 2 (b), 4.**—There is only one exception to the rule that an injured workman cannot make a claim both at common law and under the Workmen's Compensation Act: i.e., when a fruitless common law action has been commenced within six months of his accident—in such a case he may ask to have compensation assessed under the Act.

A workgirl under twenty-one years of age, who was injured by an accident, gave notice of the accident within six calendar months under the Workmen's Compensation Act, 1897. More than a year after the accident she brought an action against the employer at common law to recover damages for the injuries caused by the accident. In this action judgment was given for the employer. She then applied to the county court for assessment of compensation under the Act.

**HELD**—that having elected to proceed at common law, but not having commenced her action within six months, she was not entitled to compensation under the Act.

**CRIBB v. KYNOCHS, LD.** (No. 2), [1908] 2 K. B. [551; 77 L. J. K. B. 1001; 99 L. T. 216; 24 T. L. R. 736; 52 Sol. Jo. 581—C. A.]

**(c) Ancillary or Incidental Work.**

[No paragraphs in this vol. of the Digest.]

**(d) Assessment of Compensation.**

**(1) Difference in Wages or Earning Capacity.**

**9. "Average Weekly Earnings" — Earlier Accident — Compensation still being Paid — Second Fatal Accident—Whether Compensation to be Reckoned—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (1), (2).**—A collier met with a fatal accident in the course of his work. At the time he had only partially recovered from an earlier accident for which he was receiving compensation, and he was being employed upon light work by his masters, there being a registered agreement that his compensation should be reduced upon such employment being provided for him.

**HELD**—that the compensation payable to his widow should be calculated only from his earnings at such light work, without regarding the amount of compensation which he had been receiving.

**GOUGH v. CRAWSHAY BROS., CYFARTHA, LD.**, [1908] 1 K. B. 441; 77 L. J. K. B. 236—C. A.]

**10. "Average Weekly Earnings"—Sailor on Board Ship—Value of Free Board and Lodging—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., clauses 1, 2.**—A seaman who served on an ocean-going ship received 21s. a week in addition to his board and lodging on board the ship. He met with an accident arising out of and in the course of his employment. In proceedings for the assessment of compensation under the Workmen's Compensation Act, 1906:—

**HELD**—that, in calculating the value of the seaman's board and lodging so as to arrive at his average weekly earnings, the cost of the board and lodging to the shipowners was the only practical test.

**ROSENQVIST v. BOWRING & CO., LD.**, [1908] 2 [K. B. 108; 77 L. J. K. B. 545; 98 L. T. 773; 24 T. L. R. 504—C. A.]

**11. "Average Weekly Earnings"—"Tips"—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., s. 1 (a) (1), s. 2.**—In calculating a workman's "earnings" for the purpose of compensation under the Workmen's Compensation Act, 1906, where the employment is of such a nature that the habitual giving and receiving of tips is open and notorious and sanctioned by the employer, so that he cannot complain of their retention by the servant, the money thus received in tips ought to be brought into account in estimating the average weekly earnings. Tips which either are illicit, or involve or encourage a neglect or breach of duty on the part of the recipient to his employer, or are casual and sporadic and trivial in amount, are not to be brought into the account.

**PENN v. SPIERS AND POND, LD.**, [1908] 1 K. B. [766; 77 L. J. K. B. 542; 98 L. T. 541; 24 T. L. R. 354; 52 Sol. Jo. 280—C. A.]

**(2) Extras, Deductions and Apportionment.**

[No paragraphs in this vol. of the Digest.]

**(3) Length and Continuity of Employment.**

**12. "Average Weekly Earnings" — Casual Employment — Workman in Same "Grade"—Absence from Work—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., ss. 1, 2.**—The "average weekly earnings" of a workman are by Sched. I., sect. 2 (a), of the Workmen's Compensation Act, 1906, to "be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated." Where exact computation of his normal rate of remuneration is "impracticable" an estimate must be made as nearly as possible, and "regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment, and in the same district."

The word "grade" here refers to the particular rank occupied by the workman, as, for instance, whether he is a mason, or a bricklayer, or a



### Liability of Master for Injury to Servant— *Continued.*

bricklayer's labourer, and not to his greater or less excellence in that rank. And possibly a workman may not belong to any definite grade. Even if he does, there is no obligation to accept those average wages as the basis of compensation. The personal qualities of the workman may be considered, especially where the work is piecework.

The wages earned at the date of the accident cannot be the sole test. The object aimed at is to estimate the "normal" rate of remuneration of the injured workman.

Days on which no work is done and no wages are earned must be disregarded, except in the one case provided by sect. 1 (a).

In calculating any of the periods mentioned in sect. 1, absence from illness or any other unavoidable cause, is to be disregarded, and the employment is to be reckoned as continuous, unless the workman has been discharged on the ground of such absence, etc., and subsequently re-engaged.

Employment means employment in the same grade.

Basis of calculation for average weekly earnings discussed generally.

PERRY v. WRIGHT, CAIN v. LEYLAND & CO., [BAILEY v. KENWORTHY, LD., GOUGH v. CRAWSHAY BROS., CYFARTHA, LD., [1908] 1 K. B. 441; 77 L. J. K. B. 236; 98 L. T. 327; 24 T. L. R. 186—C. A.

13. "Average Weekly Earnings"—*Stoppages—Bank and other Holidays—Absence from Illness—Mode of Computation—Workmen's Compensation Act, 1906* (6 Edw. VII. c. 58), *Sched. I. (1) (2)*.—A collier was injured in the course of his employment. For the twelve months preceding the date of his accident his total earnings amounted to £68. During the twelve months there were fourteen weeks of stoppage, when the applicant could not get work; two weeks of Bank holidays and wakes, when he did not work; two weeks when he was away owing to illness; and one week when he took a holiday; so that he only worked thirty-three weeks. The fourteen weeks of stoppage and two weeks of Bank holidays and wakes were normal and recognised incidents of the applicant's work. In calculating the applicant's average weekly earnings during the twelve months before the accident the county court judge divided the total earnings—£68—by 33, and then made a further fractional deduction of  $\frac{23}{33}$  so as to arrive at the true average for the working year.

HELD—that this mode of calculating the average weekly earnings was right.

ANSLOW v. CANNOCK CHASE COLLIERY CO., [LD., 25 T. L. R. 167; 53 Sol. Jo. 132—C. A.

#### (4) General.

14. *Incapacity Resulting from Injury—Injured Workman already Suffering from Disease—Disease Contributing to Incapacity—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), *Sched. I. (1) (b)*.—A miner, whose

left eye was affected by disease, met with an accident whilst at work and practically lost the sight of his right eye. Owing to the condition of his left eye he was after the accident unable to work underground. The condition of his left eye was not aggravated by the accident.

HELD—that his incapacity resulted from the accident.

LEE v. BAIRD & CO., LD., [1908] S. C. 905; [45 Sc. L. R. 717—Ct. of Sess.

### (e) Commencement of Proceedings: Claim, Notice, Dispute.

14a. *Claim for Compensation—No Demand for Specific Sum—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 2].—Under s. 2 (1) of the Workmen's Compensation Act, 1897, a "claim for compensation" must be a claim for a specific sum.

Kilpatrick v. Wemyss Coal Co. ([1907] S. C., 320) followed.

THOMPSON v. R. W. GOOLD & CO., 25 T. L. R. [163—C. A.

15. *Competency—Unrecorded Agreement not Acted on for Seven Years*.—In March, 1899, a miner sustained injuries by which he was totally incapacitated, and by agreement he was paid compensation under the Workmen's Compensation Act, 1897, till May, 1900, at the rate of 14s. 4d. per week, being half his previous wages. No memorandum of the agreement was ever recorded, and it was never formerly varied or ended under the Act. In May, 1900, the employers ceased the weekly payments, and the workman returned to their service, in which he remained working and earning wages, when he was able, till April, 1907, when, as the result of his injuries in 1899, he became totally incapacitated for work. No compensation was paid to the workman between May, 1900, and April, 1907. In 1907, the workman claimed compensation as from May, 1900, and the employers having refused to pay compensation as claimed, he instituted arbitration proceedings under the Act. The employers maintained that, in respect of the agreement, arbitration was incompetent.

HELD—that there was no subsisting agreement between the parties, and that consequently arbitration proceedings were competent.

DEMPSTER v. BAIRD, [1908] S. C. 722—Ct. of [Sess.

### (f) Dependants.

16. *Amount of Compensation—Sum "Reasonable and Proportionate to the Injury"—Illegitimate Child—Funeral Expenses*.—An illegitimate child for whose support the deceased had been paying aliment under a decree of affiliation and aliment, was partially dependent on his earnings, and the maximum sum available for compensation under the Act was 150l. No other dependant having applied for compensation, the arbitrator awarded the whole sum of £150, less £5 10s. of funeral expenses, to the illegitimate child.



### Liability of Master for Injury to Servant— *Continued.*

HELD—that the arbitrator had proceeded on a wrong principle; the Act does not provide for the maximum sum being awarded in every case, but only for an award of reasonable compensation within that limit. The case was therefore remitted for him to ascertain the prospective value of the contributions that would probably have been made by the deceased, if he had lived, for the support of his illegitimate child.

*Semble*—reasonable funeral expenses are a proper charge on the fund available for compensation.

MURRAY v. GOURLAY, [1908] S. C. 769; 45 [Sc. L. R. 577—Ct. of Sess.]

17. *Infant Dependents—Agreement as to Amount of Compensation—Approval of Registrar—Discharge of Employer—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), *Sched. II., 9 (d)—Workmen's Compensation Rules 1908, r. 4.*—Where someone on behalf of an infant dependant agrees, so far as he can do so, to the payment by the employer of a certain sum into Court, the registrar must protect the infant's interest; if he is not satisfied as to the adequacy of the amount, he must refer the matter to the Judge, who must then serve notice on the employer; if, however, the registrar is satisfied and evidences that fact by signing the receipt for the money, the agreement is binding, and the employer is freed from liability.

RHODES v. SOOTHILL WOOD COLLIERY CO. LD., [1908] W. N. 252—C. A.

18. *Who are—Posthumous Illegitimate Child—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), *ss. 1, 13.*—A collier who was just about to marry a girl who was pregnant by him was killed by an accident in the mine.

HELD—that the child born subsequently was a "dependant."

Williams v. Ocean Coal Co., *Ld.* ([1907] 2 K. B. 422; 76 L. J. K. B. 1073; 97 L. T. 150; 23 T. L. R. 584—C. A.) followed and applied.

SCHOFIELD v. ORRELL COLLIERY CO. LD., [25 T. L. R. 106; [1908] W. N. 243; 53 Sol. Jo. 117—C. A.]

19. *Who are—Wife in Asylum.*—A workman had maintained his wife until her removal as a dangerous lunatic to a lunatic asylum, where she was detained by the asylum authorities under confinement, and where she was being maintained by them at the date of his accident and death.

HELD—that these circumstances were insufficient to rebut the presumption of dependency, and that there was a total dependency of the wife on her husband's earnings.

KELLY v. HOPKINS, [1908] 2 I. R. 84—C. A.

20. *Who are—Wife Living Apart from and not Supported by Husband—Child Living with and Supported by Wife.*—In 1895 a wife voluntarily left her husband, and a month afterwards

gave birth to a child. By her earnings and the assistance of relatives with whom she lived, she supported herself and her child, never asking for and never receiving aliment from her husband.

In 1907 the husband was killed by an accident in the course of his employment as a workman.

HELD—that neither the wife nor the child was either wholly or in part dependent upon the earnings of the workman at the time of his death.

LINDSAY v. M'GLASHAN, [1908] S. C. 762; 45 [Sc. L. R. 559—Ct. of Sess.]

21. *"Wholly dependent"—Widow Living With One Son—Four Other Sons Living Elsewhere—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), *s. 13.*—A widow lived with and was supported by an unmarried son, a working miner. She had four other sons, all miners, and married.

HELD—that, notwithstanding her right to be supported by her other sons, she was wholly dependent upon the one with whom she lived. RINTOUL v. DALMENY OIL CO., LD., [1908] [S. C. 1025—Ct. of Sess.]

#### (g) Indemnity.

[No paragraphs in this vol. of the Digest.]

#### (h) Jurisdiction.

[No paragraphs in this vol. of the Digest.]

#### (i) Medical Examination.

[No paragraphs in this vol. of the Digest.]

#### (j) On, In, or About.

22. *Workman Employed by Sub-Contractor—Liability of Principal—"On, in, or About" Premises—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), *s. 4 (1) (4).*—A contractor undertook to do certain paving work, and part of his contract was to cart rubbish from the place and shoot it where he pleased. He sub-let part of this contract. A workman in the employment of the sub-contractor, while driving a cart loaded with rubbish through the public streets to a place which was not the contractor's shoot, fell off the cart and was killed. The accident happened two miles from the work.

HELD—that the accident did not happen on or in, or about premises on which the contractor had undertaken to execute the work, or which were otherwise under his control or management within the meaning of sect. 4, sub-sect. 4, of the Workmen's Compensation Act, 1906, and that therefore the contractor was not liable to pay compensation under the Act.

ANDREWS v. ANDREWS AND MEARS, [1908] 2 [K. B. 567; 77 L. J. K. B. 974; 99 L. T. 214; 24 T. L. R. 709—C. A.]

#### (1) Agriculture.

[No paragraphs in this vol. of the Digest.]

#### (2) Buildings (Statutory).

[No paragraphs in this vol. of the Digest.]

#### (A) Construction and Repair.

[No paragraphs in this vol. of the Digest.]

**Liability of Master for Injury to Servant—**  
*Continued.*

(B) *Exceeding 30 feet.*

[No paragraphs in this vol. of the Digest.]

(C) *Scaffolding.*

[No paragraphs in this vol. of the Digest.]

(3) *Engineering Work.*

[No paragraphs in this vol. of the Digest.]

(4) *Factory.*

(A) *Dock, Wharf, Quay.*

**23. Training Ship Moored in River—Whether a “Ship” or “Factory”**—*Workmen’s Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 7—*Factory and Workshop Act, 1901* (1 Edw. 7, c. 22), s. 149.]—A vessel, moored in the Thames, was used for training for the sea service pauper boys chargeable to metropolitan parishes and unions. It was provided for that purpose under sect. 11 of the Metropolitan Poor (Amendment) Act, 1869, and such vessels are thereby deemed to be schools or asylums within the meaning of the Metropolitan Poor Act, 1867. On board there was an engine-room with stoke-hole, boilers, and an electrical installation, all of which were for the requirements of the vessel and those residing on it. A stoker in the electrical station received severe injuries in course of his duties, and claimed compensation.

HELD (Cozens Hardy, M. R., dissenting)—that the vessel could not be regarded as a ship although it might be capable of being converted into one, but was a factory within the meaning of the Factory and Workshop Act, Act, 1901, and that the stoker was entitled to compensation under the Workmen’s Compensation Act, 1897, his employers being “occupiers” of a “factory” and therefore “undertakers” within the meaning of that Act.

BENSON v. METROPOLITAN ASYLUMS BOARD,  
[124 L. T. Jo. 403—C. A.]

See also No. 45, *infra*.

(B) *Warehouse, Machinery, Plant, etc.*

See No. 23, *supra*.

(5) *Mine.*

[No paragraphs in this vol. of the Digest.]

(6) *Railway.*

[No paragraphs in this vol. of the Digest.]

**(k) Out of and in the Course of Employment.**

**24. Bite of Cat**—*Workmen’s Compensation Act, 1906* (6 Edw. 7. c. 58), s. 1.]—A workman was employed in a stable where a stable cat was kept. He was, in the course of his employment, taking his dinner in the stable when the cat sprang at him and bit him. The cat was not known to be vicious, nor was the workman teasing the cat.

HELD—that the accident arose out of and in the course of the workman’s employment, and he was entitled to compensation.

ROWLAND v. WRIGHT, 77 L. J. K. B. 1071; 24  
[T. L. R. 852—C. A.]

**25. Burden of Proof—Workmen’s Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1. *sub-s. 1*].—A person who was employed as a donkeyman on board a ship was returning to the ship when he fell off the gangway and was killed. The only evidence as to how the accident happened was the following entry in the log book:—“11.15, January 4, 1908. Thomas McDonald, donkeyman, whilst returning on board ship from the shore, more or less the worse for liquor, refused the aid of night watchman and policeman to assist him up the gangway, and on reaching the top step suddenly overbalanced and fell over the gangway mainropes, dropping between the ship and quay, and striking the iron girder before reaching the water.” In proceedings by his widow for the assessment of compensation under the Workmen’s Compensation Act, 1906:—

HELD—that the evidence was equally consistent with the deceased man having gone ashore either on ship’s business, or upon his own business, or without leave; and that therefore the applicant for compensation had not discharged the *onus* upon her of proving that the accident arose out of and in the course of the employment, and was not entitled to compensation.

MCDONALD v. OWNERS OF THE STEAMSHIP  
[“BANANA,” [1908] 2 K. B. 926; 24 T. L. R.  
887; 52 Sol. Jo. 741—C. A.]

**26. Commercial Traveller—Workmen’s Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1.]—Although there may be cases where the employment of a workman ceases as soon as he leaves his work, a commercial traveller is on a different footing, his business being to travel. From the time when he leaves his home on his employer’s business until he returns to his home he is serving in the employment of his employers.

DICKINSON v. BARMACK, LD., 124 L. T. Jo. 403  
[—C. A.]

**27. Engine Driver Crossing Line for own Purposes—Workmen’s Compensation Act, 1906** (60 & 61 Vict. c. 37), s. 1 (1).]—An engine driver whose engine was taking in water walked across a siding to get from a friend on another engine a book unconnected with his duties. While walking back he was killed by a truck which was being shunted.

HELD—that the accident did not arise out of and in the course of his employment.

REED v. GREAT WESTERN RY. CO., 25 T. L. R.  
[36; 53 Sol. Jo. 31; [1908] W. N. 212—H. L.]

**28. “Larking” while at Work.**—S. and P., two drawers in a coal pit, were sitting in a hutch, S. driving the horse. In passing near the working place of another drawer, B., P. took hold of a hutch which B. had been using and pulled it after him. B. followed, and, in endeavouring to recapture his hutch, pushed P. with a prop. P. then threw some rubbish at B., who in avoiding the rubbish, struck his head against a projection on the wall and was injured.

**Liability of Master for Injury to Servant—**  
*Continued.*

**HELD** (*dissentiente* Lord Stornmonth-Darling)—that the accident arose in the course of his employment, but did not arise out of it.

**BURLEY v. BAIRD**, [1908] S. C. 545—Ct. of [Sess.

**29. Lion Tamer—Caging Escaped Lion—***Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), s. 1.]—A workman was employed by a lion tamer to look after baggage, clean out lion cages, and generally make himself useful, but it was no part of his duty to feed the lions. One afternoon the workman was left in sole charge of the cages of lions, with orders to see that no harm came to them or any one else by reason of their fierceness. One of the lions got out of a cage and into a dressing room, but there was no evidence to show how this happened. The workman went into the dressing room and tried to drive the lion back into the cage, when the lion turned on him and killed him. In a claim by the workman's dependants against the employer under the Workmen's Compensation Act, 1906, the county court judge dismissed the claim, being of opinion that the facts were consistent only with the deceased having interfered with the lion for some purpose of his own, there being no evidence to support the theory that the lions had fought or that the deceased had acted otherwise on an emergency.

**HELD** (allowing the appeal)—that, as the deceased had been left in charge, it was his duty to try to get the lion back into the cage, and that as he was killed in the discharge of that duty the accident arose "out of and in the course of his employment."

**HAPELMAN v. POOLE**, 25 T. L. R. 155—C. A.

**30. Ship Steward—Returning to Ship Drunk—***Accident in Boarding—Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), s. 1.]—A steward employed on board a ship went ashore while the ship was discharging cargo in port during hours when he was at liberty so to do.

Being to some extent under the influence of drink, he returned on board the ship by means of the cargo skid in order to escape the observation of the officers of the ship, instead of by the ordinary gangway, a course that was apparently contrary to orders. He slipped on the deck and fell down the unguarded hatch into the hold, sustaining injuries which resulted in his death.

**HELD**—that the accident arose "out of and in the course of the employment" of the deceased, within the meaning of sect. 1 of the Workmen's Compensation Act, 1906; and that therefore the dependants of the deceased were entitled to compensation.

**ROBERTSON v. ALLAN BROTHERS & Co.**, 77 L. J. [K. B. 1072; 98 L. T. 821—C. A.

**31. Ship—Man working on—Returning to Ship—***Accident in Boarding—Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), s. 1.]—A man, working on a vessel, went ashore at night contrary to his foreman's orders. On returning he

walked past the gangway, and at a point further on tried to jump from the pier to the vessel; in so doing he was drowned. He had been warned not to jump on to the vessel, as it was against rules to do so.

**HELD**—that the accident did not arise out of or in the course of his employment.

**MARTIN v. FULLERTON & Co.**, [1908] S. C. 1030 [—Ct. of Sess.

**32. Station Policeman—Onus of Proof—***Presumption from Nature of Employment—Workmen's Compensation Act*, 1897 (60 & 61 Vict. c. 37), s. 1 (1).]—A station policeman in the employment of a railway company was run down by an engine on a siding at the station. There was no evidence to show how or why he came to be at the spot where he was injured, but he might legitimately have been there in the course of his duties as station policeman.

**HELD**—that having regard to his duties there was a presumption that he had been injured by accident arising out of and in the course of his employment, and that in the absence of evidence to the contrary such should be taken to be the fact.

**GRANT v. GLASGOW AND SOUTH-WESTERN [RAILWAY]**, [1908] S. C. 187—Ct. of Sess.

**32a. Ship Lying in Harbour—Man Going Ashore for his Own Purposes—With or Without Leave—***Falling between Quay-side and Vessel—Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58).]—M., a fireman on a steamship, arrived at New York, went ashore to buy personal necessities. On returning, not drunk but after drinking, he fell from the ladder connecting the quay-side with the ship and was drowned. By a local law in New York written passes given by the master or chief engineer of the vessel are needed to protect foreign sailors on shore from arrest. The county court judge was not satisfied that M. had such a pass, but found that his superior knew that he was going ashore, and that if he had no pass the reason was that his superior had not given one to him.

**HELD** (Fletcher Moulton, L. J., dissenting)—that it was immaterial whether M. went ashore in breach of orders or by permission, that he was outside the Workmen's Compensation Act, 1906, from the moment he left the ship for his own purposes till he got back on to the ship, and that, as he had not actually returned on board the ship, the steamship company were not liable.

*Macdonald v. Owners of ss. "Banana"* (No. 25 *supra*) followed.

*Robertson v. Allan Bros.* (No. 30 *supra*) distinguished.

**MOORE v. MANCHESTER LINERS, LD.**, *Times*, [December 25th, 1908—C. A.

**33. Tortious Act of Fellow-Servant—Practical Joke—No Relation to Employment—***Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), s. 1 (1).]—An employer is not liable under the Act of 1906 to a workman who is injured by the tortious act of a fellow-workman, such act having no relation to the employment.

*Armitage v. Lancashire and Yorkshire Ry. Co.* ([1902] 2 K. B. 178; 71 L. J. K. B. 773; 66 J. P.



### Liability of Master for Injury to Servant— *Continued.*

613; 86 L. T. 883; 18 T. L. R. 648—C. A.) followed.

Per Buckley, L. J., "out of" points to the cause of the accident, "in the course of" points to the time, place, and circumstances.

FITZGERALD *v.* W. G. CLARK & SON, [1908]  
[2 K. B. 796; 77 L. J. K. B. 1018; 99 L. T.  
101—C. A.]

**34. When Employment Begins—Newly Engaged Farm Servant—Conveying Furniture in Employer's Wagon to New Cottage—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), ss. 1, 13.]—A farmer engaged a shepherd and sent a wagon to convey him, his family and furniture to the cottage which he was to occupy during his employment. On the journey the shepherd fell from the wagon.

HELD—that although there was a contract of service, the employment had not yet begun, and that therefore the accident did not arise "out of and in the course of" the employment.

WHITBREAD *v.* ARNOLD, 99 L. T. 103—C. A.

**35. Workman Going Home from Work—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1, sub-s. 1.]—A large number of workmen employed at the appellants' colliery lived some six miles from the colliery. The appellants supplied a train composed of carriages belonging to them each morning and evening to bring the workmen to and from their work without charge, and this train was run upon the line of a railway company by a locomotive provided by the company. The appellants erected a platform on the line, upon land belonging to the railway company, about a quarter of a mile from the colliery, and the workmen walked from the platform to the colliery by a public road. The platform was repaired and lighted by the appellants. While waiting at the platform for the train on his way home from work one of the workmen was accidentally pushed off the platform and was killed by the train. In proceedings by his widow to have compensation assessed under the Workmen's Compensation Act, 1906, the county court judge found that it was an implied term of the contract of service that the trains should be provided by the appellants, and that the workmen should be entitled to travel in them to and fro without charge, and he held that the relationship of master and servant existed at the time of the accident, and that the case came within the Act.

HELD—that in those circumstances the accident arose "out of and in the course of the employment" within the meaning of sect. 1, sub-sect. 1, of the Act, and the appellants were liable to pay compensation.

CREMINS *v.* GUEST, KEEN AND NETTLEFORD, [1908] 1 K. B. 469; 77 L. J. K. B. 326; 98 L. T. 335; 24 T. L. R. 189—C. A.

**36. Workman outside Works—Rescuing Fellow-Workman not Engaged upon Employer's Work—Workmen's Compensation Act, 1906**

(6 Edw. 7, c. 58), s. 1 (1).]—M., a workman, was returning to his employer's works, having been out (at a proper moment) to obtain refreshment. In the street he met a gang of fellow-workmen employed in hauling a truck. Another fellow-workman, like M., not engaged in that particular job, came up and interfered with the gang for a lark, with the result that he fell in front of the truck. M. rescued him and was injured in so doing.

HELD—that M.'s accident did not arise out of or in the course of his employment.

MULLEN *v.* STEWART & Co., LD., [1908] S. C. [991—Ct. of Sess.]

### (1) Practice.

#### (1) Appeals and New Trials.

**37. Award in Favour of Employer—Appeal—Practice—Time—Date from which Time Runs—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58) Sched. II., 4—*Workmen's Compensation Rules, 1907*, r. 28—*R. S. C., Ord. 59*, r. 12.]—Where a county court judge makes an award either in favour of the employer or of the workman, the time for appealing runs from the date when the award is actually signed and perfected.

CLAYTON *v.* JONES' SEWING MACHINE CO. LD., [1908] W. N. 253—C. A.

**37a. Duty of County Court Judge to take Notes—Workmen's Compensation Rules, 1907, r. 34.]—Under r. 34 of the Workmen's Compensation Rules, 1907, the county court judge ought to take a note, for the assistance of the Court of Appeal, of every point which in any reasonable aspect of the case can come before the Court of Appeal, even though his attention is not called by the representatives of either side to the necessity of so doing. The parties ought not to have the burden of taking shorthand notes, the use of which on appeal is discouraged.**

PRACTICE NOTE, *Times*, December 18th, 1908—[C. A.]

#### (2) Costs.

[No paragraphs in this vol. of the Digest.]

#### (m) Redemption of Payment.

[No paragraphs in this vol. of the Digest.]

#### (n) Registration of Agreement.

**38. Memorandum—Recording—Disputing Genuineness—Order of County Court Judge that Memorandum be Recorded—Appeal—Workmen's Compensation Act, 1897** (60 & 61 Vict. c. 37), Sched. II., Pars. 8, 10—*Workmen's Compensation Rules, 1898*, rr. 43, 45.]—Where the genuineness of a memorandum of agreement as to the amount of compensation payable by an employer to his workman in respect of injuries by accident is disputed, and the county court judge, upon an application made to him, hears evidence and orders the memorandum to be recorded, the judge is acting in a judicial capacity, and not in the capacity of adviser to his registrar, and an appeal lies from his decision to the Divisional

**Liability of Master for Injury to Servant—**  
*Continued.*

Court under sect. 120 of the County Courts Act, 1888.

JOHNSTON *v.* MEW, LANGTON & Co., 97 L. T. [308; 23 T. L. R. 607—Div. Ct.

Affirmed, 98 L. T. 517; 24 T. L. R. 175—C. A.

**39. Memorandum of Agreement—Registration of Action Claiming Damages for Breach of Agreement—Agreement to Give Work—For What Length of Time—Competency.**—A memorandum of agreement, registered under paragraph 8 of Sched. II. of the Workmen's Compensation Act, 1897, bore to be "in the matter of an agreement under the Workmen's Compensation Act, 1897," between L. and B. & Co., and it set forth that L. had claimed compensation under the Act from B. & Co.; that the parties were agreed that the maximum compensation to which L. was entitled was 17s. 6d.; and that B. & Co. "agree in lieu of such compensation to give L. regular employment as a foreman" and "to pay him the fixed weekly wage of 23s. . . . and also to pay him on the date hereof £90 sterling, and these in full of all his claims for compensation under the said Act."

B. & Co. paid £90 to L., and they also employed him on the agreed terms for about three years. They then dismissed him, and he brought an action for breach of contract.

**HELD**—that there was nothing giving him a right to permanent employment so long as he saw fit to work.

*Semble*, the agreement being indivisible and being registered under the Act, an action would not lie in respect of it.

LAWRIE *v.* BROWN & Co., LD., [1908] S. C. 705  
[—Ct. of Sess.]

**(c) Reviewing Award.**

**40. Refusal to Undergo Operation—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. I., 12.]**—Upon an application by employers for the review of an award it appeared that the workman's loss of use of his left hand was caused by the removal of the third finger and the top of the thumb, the existence of pain in the palm and the permanent curvature of the second finger into the palm; that three doctors who had examined him recommended that the second finger should be removed and that a nodule in the palm which they believed to be the source of the pain should also be removed; that the proposed operations were simple or minor operations, not attended with appreciable risk or serious pain, and were likely to restore to the workman in large measure, or altogether, the use of his hand for the purpose of his former work; that the workman refused to undergo the operations; and that "his continued incapacity to use his left hand and any continued pain in his left palm are fairly attributable to the want of such operations."

**HELD**—that the workman's refusal to undergo

such operations disentitled him to further compensation.

DONNELLY *v.* BAIRD & Co., LD., [1907] S. C. [536—Ct. of Sess.]

**41. Refusal to Undergo a Slight Operation—Right to Further Compensation—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I.]**—Where a workman might be cured by undergoing a slight operation, a county court judge has a discretion to treat his refusal to do so as disentitling him to any further compensation.

*Donnelly v. Baird & Co. (supra)* approved.

WARNCKEN *v.* MORELAND & SON, LD., 25 [T. L. R. 129; 53 Sol. Jo. 134; [1908] W. N. 252—C. A.]

**42. Review of Weekly Payments—Payments under Unrecorded Verbal Agreement—Date from which Payments may be Ended, etc.—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (16).]**—Employers who were paying compensation under an unrecorded verbal agreement applied on December 21st, 1907, to have the payments reviewed and ended as from November 1st.

The arbitrator found that the workman's incapacity in fact ceased on November 1st, and ended the payments.

**HELD**—that, there being no recorded agreement, the ending of payments must take effect as from November 1st.

SOUTHHOOK FIRE-CLAY Co., LD. *v.* LAUGH-  
[LAND, [1908] S. C. 831; 45 Sc. L. R. 664—  
Ct. of Sess.]

**(p) Serious and Wilful Misconduct.**

**43. Breach of Statutory Regulations—Riding on Shafts of Cart and not Holding Reins—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1 (2) (c).]**—If an accident occurs to a carter who, in breach of the statutory provision, is riding on the shafts of his cart without holding the reins and whose horse bolts, his accident is not as a matter of law necessarily attributable to serious and wilful misconduct on his part.

MITCHELL *v.* WHITTON, [1907] S. C. 1267—Ct. [of Sess.]

**44. Breach of Rule—Miner—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 2 (c).]**—The appellant, who was a bottomer employed at a mid-working in the mine, called to the bottomer at the foot of the shaft to send up the cage. The latter signalled to the engine-man to raise the cage. By the system of signalling in use in the mine, the enginemán, on receiving a signal to raise the cage, was entitled, unless stopped by a further signal, to raise the cage to the pit-head, and sometimes, as on the occasion in question, he did so without stopping at the mid-working. The appellant, without ascertaining whether the cage had stopped or not, opened the gate fencing the shaft, pushed his hutch forward, and fell with it down the shaft and was injured. In opening the gate

**Liability of Master for Injury to Servant—**  
*Continued.*

fencing the shaft before the cage was stopped at the mid-working, the appellant committed a breach of a rule in operation in the mine. The appellant knew of the rule, and was warned regarding it only a few days before the accident occurred. In an application for compensation under the Workmen's Compensation Act, 1906, the arbitrator found that the appellant had been guilty of "serious and wilful misconduct" within the meaning of sect. 1, sub-sect. 2 (c), of the Act, and was consequently not entitled to compensation.

**HELD**, dismissing the appeal—that the question was one of fact for the arbitrator and that there was evidence to support his finding.

Per **Ld. Loreburn, L. C.**—It is not the province of the Court to lay down that the breach of a rule is *prima facie* evidence of serious and wilful misconduct. That is a question purely of fact to be determined by the arbitrator, who must decide it for himself, and ought not to be affected by artificial presumptions of fact. Decision of the First Division of the Court of Session (45 Sc. L. R. 686) affirmed.

**GEORGE v. GLASGOW COAL COMPANY**, 25 [T. L. R. 57; [1908] W. N. 219; 46 Sc. L. R. 28—H. L.]

**(g) Undertakers.**

**45. Ship in Wet Dock—Repairers—Workmen's Compensation Act, 1897** (60 & 61 Vict., c. 37), s. 7.]—A workman was employed by ship repairers on board a steamship which was lying in a wet dock for the purpose of taking particulars of work to be done by them in connection with repairs to the steamship. While so employed he was injured by an accident arising out of and in the course of his employment.

**HELD**—that the employers had not the actual use or occupation of the dock, and were, therefore, not the "undertakers" within sect. 7 of the Workmen's Compensation Act, 1897, and were not liable to pay compensation.

**Smith v. Standard Steam Fishing Company**, [1906] 2 K. B. 275; 75 L. J. K. B. 640; 54 W. R. 582; 95 L. T. 42; 22 T. L. R. 578—C. A.] followed.

**MORGAN v. TYDVIL ENGINEERING AND SHIP [REPAIRING COMPANY]**, 98 L. T. 762; 24 T. L. R. 403—H. L.]

*See also* No. 23, *supra*.

**46. Sub-Contracting—Work "Undertaken" by the Principal—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 4, sub-s. 1.]—Chemical manufacturers contracted with A. for him to tar the outside of their tanks. One of A.'s workmen was accidentally killed upon the job.

**HELD**—that the tarring of the tanks was not part of the work "undertaken" by the manufacturers within the meaning of sect. 4 (1), and that they were not liable to pay compensation.

**ZUGG v. CUNNINGHAM, LD.**, [1908] S. C. 827 [—Ct. of Sess.]

**47. Sub-contracting—Land Acquired by Municipal Corporation for Extension of Market—Removal of House on Land—Contractor—Injury to Person Employed by Contractor—Liability of Corporation—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), ss. 1, 4, 13.]—A municipal corporation bought a piece of land for the extension of their market. On the land were the ruins of an old mill which had to be cleared away. The corporation advertised for a person to purchase the bricks, to pull the mill down, and clear the site. T. made an offer of £15 for the bricks and undertook to pull down the mill and clear the site; and this offer was accepted by the corporation. In the course of demolishing the mill a workman was fatally injured, and his widow claimed compensation against T. and the corporation. The county court judge held that the workman was in T.'s employment and that T. was liable to pay compensation, and further that the corporation were also liable under sects. 4 and 13 of the Workmen's Compensation Act, 1906. The corporation appealed.

**HELD** (dismissing the appeal)—that the demolition of the mill was work undertaken by the corporation, that it was done by virtue of the contract made with T. for that purpose, and that by virtue of sects. 4 and 13 the corporation were liable as principals.

**MULROONEY v. TODD AND BRADFORD CORPORATION**, [1908] W. N. 242; 25 T. L. R. 103; 53 Sol. Jo. 99—C. A.]

**(r) Workman.**

**48. "Carrying on Business"—"Employment of a Casual Nature"—Collection of Rents and Management Generally by Owner of Some Houses and Co-owner of Others.]**—The defendant owned several houses and was co-owner of three others, which were let to weekly tenants. She collected the rents and generally managed the property, accounting to the other co-owners for rent received on their behalf, but they paid her nothing for so doing.

**HELD**—that she was not carrying on the business of an estate agent within the Workmen's Compensation Act, 1906, so as to be liable to compensate a workman whose employment was of a casual nature, and who met with an accident while engaged in doing some repairs to the houses.

**BARGEWELL v. DANIEL**, 98 L. T. 257—C. A.]

**49. Contract of Service—Medical Officer of Health—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 13.]—There is no contract of service between a "dispensary doctor" and the guardians of his district, and he is not therefore entitled to compensation if injured in the discharge of his duties.

**MURPHY v. ENNISCORTHY GUARDIANS**, [1908] 2 I. R. 609—C. A.]

**50. "Employment of a Casual Nature"—Person Employed One Day a Week—Washerwoman—"Contract of Service"—Workmen's Compensation Act, 1906** (6 Edw. VII., c. 58), s. 13.]



**Liability of Master for Injury to Servant—**  
*Continued.*

—A woman who did washing was employed by the respondent regularly on Friday in each week and on alternate Tuesdays to go to his house and do washing, and she went on each of those days without being told to do so on each occasion. On other days she worked for other persons. In the course of her employment at the respondent's house on one of these regular days she met with an accident. In proceedings by her to assess compensation under the Workmen's Compensation Act, 1906, the county court judge found that the applicant was in regular and not casual employment, and he awarded her compensation.

**HELD**—that there was ample evidence to support the decision.

**DEWHURST v. MATHER**, [1908] 2 K. B. 754; [77 L. J. K. B. 1077; 99 L. T. 568; 24 T. L. R. 819; 52 Sol. Jo. 681—C. A.]

**51. "Employment of a Casual Nature"—Purposes of Employer's Trade—Cleaning a Doctor's Windows—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 13.]—A man was employed occasionally to clean windows in a doctor's house.

**HELD**—to be "casually" employed, and further, not to be employed for the purposes of the doctor's trade or business, although part of the house was used for professional purposes. The employment "was essentially in connection with his private residence, and not for the purposes of his business."

**RENNIE v. REID**, [1908] S. C. 1057—Ct. of Sess.

**52. "Employment of a Casual Nature"—Window Cleaning—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 13.]—The appellant, for about two years before the accident happened, used to employ a man, who earned his living by cleaning windows, to clean the windows of his private house whenever they wanted cleaning. His practice was to send a postcard to the man asking him to come and clean the windows, and he was paid at the end of each job. There was no contract that he should be employed. While engaged in cleaning the windows he was killed by an accident.

**HELD**—that the employment was of a "casual" nature, and the appellant was not liable to pay compensation under the Workmen's Compensation Act, 1906.

**HILL v. BEGG**, [1908] 2 K. B. 802; 77 L. J. [K. B. 1074; 99 L. T. 104; 24 T. L. R. 711; 52 Sol. Jo. 581—C. A.]

**53. Employment of a Casual Nature—Workman as Independent Contractor—Window Cleaner.]**

**HELD**, on the facts—that a man who was employed to keep clean the windows of a house, who did so at such times as suited him, was not casually employed, but, further, that he was an independent contractor and not a workman entitled to compensation.

**COZENS v. RUTHERFORD**, 52 Sol. Jo. 700—County [Ct.]

**54. Employment on Ship out of England—Contract to Navigate Lighter for Owners from England to place Abroad—Injury to one of Contractors' Crew—Liability of Owners—Workmen's sub-s. 1.]** A company carrying on business as coal merchants and lightermen in England and elsewhere, and expressly authorised by their memorandum of association to purchase lighters, purchased in England a lighter for use in their business at Cape Verde. In March, 1908, they entered into a contract with one G. by which G. agreed with the company (described as "owners") to take the lighters from Stockton to Cape Verde, and there deliver it to the company. He was to provide an efficient crew, pay their wages, and indemnify the company against any claims of the crew. The company were to pay all demands for insurance and clearances at Stockton. During rough weather off Ramsgate an accident occurred to one of the crew, who claimed compensation from the company. The company denied liability, either as employers of the man, or under the sub-contracting provisions in sect. 4.

The county court judge held that certain sections of the Merchant Shipping Act, 1894, compelled him to hold that the company were the man's employers.

**HELD** by the C. A., without deciding the above point, that the case fell within sect. 4 (1), the company having in the course or for the purposes of their trade or business contracted with G. for the execution by or under G. of part of the work proper to their undertaking, and in that sense undertaken by them.

**DITTMAR v. WILSON, SONS & Co., Times**, [December 18th, 1908—C. A.]

**55. Remuneration Exceeding £250 a Year—Captain of Ship—Food Supplied—Test of Value—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 13.]—The captain of a coasting steamer was paid £216 a year, and he was provided by the owners with his food while on board, and allowances for washing. Except for a few days' holiday in each year, he lived on board the whole year. He was killed by an accident arising out of and in the course of his employment. In proceedings by his widow for the assessment of compensation under the Workmen's Compensation Act, 1906, the county court judge, in ascertaining whether the deceased's remuneration exceeded £250 a year, held that the test was, what did the deceased save by his allowance of food, and upon that footing he came to the conclusion that the allowance of food did not bring his remuneration up to a sum exceeding £250, and that therefore he was a "workman" within the definition in sect. 13 of the Workmen's Compensation Act, 1906, and that his widow was entitled to compensation under the Act.

**HELD**—that the proper test was what the reasonable board and allowances provided for him by the owners would have cost the deceased to provide for himself; that the county court judge had taken the wrong test; and that the case must be remitted to him.

**DOTHIE v. MACANDREW & Co.**, [1908] 1 K. B. [803; 77 L. J. K. B. 388; 98 L. T. 495; 24 T. L. R. 326—C. A.]

**Liability of Master for Injury to Servant—**  
*Continued.*

**56. Seaman—Mate of Fishing Vessel—Remunerated by Share of Profits—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 7 (2).—The sole remuneration of the mate of a steam trawler was a fixed proportion of the net balance arrived at by deducting certain expenses from the sale price of the fish caught. The rest of the crew received fixed wages from the shipowners.

**HELD**—that this remuneration was “a share in the profits or gross earnings” of the vessel, and that he could not claim compensation for an accident under the Act of 1906.

**GILL v. ABERDEEN STEAM TRAWLING AND [FISHING Co., LD., [1908] S. C. 328—Ct. of Sess.**

**57. Worker in Labour Yard of Charitable Organisation—Injury by Accident—Compensation—Employment “for Purposes of the Employers’ Trade or Business”—“Contract of Service”—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), ss. 1, 13].—The respondents were a charitable organisation carrying on philanthropic work. They instituted a labour yard, and in return for work done therein by persons out of employment who applied to them for relief, they provided such persons with board and lodging.

The applicant having so applied for relief, work was given to him to perform in the respondents’ labour yard, and during such occupation he met with an accident which caused personal injury to him, for which he claimed compensation under the Workmen's Compensation Act, 1906.

**HELD**, without deciding the question whether the respondents carried on a “trade or business” within the meaning of sect. 13 of the Act—that the applicant had not established that there was any “contract of service” between him and the respondents within the meaning of that section.

**BURNS v. MANCHESTER AND SALFORD [WESLEYAN MISSION, 99 L. T. 579—C. A.]**

**58. Workman Engaged by Central (Unemployed) Body—Accident to Workman while so Engaged—Unemployed Workmen Act, 1905** (5 Edw. 7, c. 18), s. 1—*Workmen's Compensation Act, 1906* (6 Edw. 7 c. 58), ss. 1, 13].—The Central Body, constituted under sect. 1 of the Unemployed Workmen Act, 1905, provided temporary work for a workman. In the course of his employment the workman received injuries from the effect of which he died.

**HELD**—that the Central Body were “employers” within the meaning of the Workmen's Compensation Act, 1906, and were therefore liable to pay compensation to the deceased workman's widow.

**PORTON v. THE CENTRAL (UNEMPLOYED) [BODY FOR LONDON, [1908] W. N. 242; 25 T. L. R. 102—C. A.]**

**(s) Contracting Out.**

**59. Scheme Certified under Act of 1897—No Re-certification under Act of 1906—Workmen's**

*Compensation Act, 1906* (6 Edw. 7, c. 58), ss. 3, 15].—The Workmen's Compensation Act, 1906, came into operation on July 1st, 1907. A workman entered an employment on August 9th, 1907, and agreed to accept a scale of compensation under a scheme certified under the Workmen's Compensation Act, 1897—the certificate bearing that the scheme was to expire on December 31st, 1908. On August 15th, 1907, when the scheme had not been re-certified under sect. 15 of the Workmen's Compensation Act, 1906, the workman was injured by an accident arising out of and in the course of his employment.

**HELD**—that the workman having entered on his employment after July 1st, 1907, was not barred from obtaining compensation under the Act by having agreed to accept the provisions of a scheme certified under the Act of 1897, but which had not been re-certified under the Act of 1906.

**WALLACE v. HAWTHORNE, LESLIE & Co., [1908] S. C. 713; 45 Sc. L. R. 547—Ct. of Sess.**

**2. Under Employers' Liability Act, 1880.**

**60. Defect in Machinery—Dangerous Machine—Want of Instructions—Employers' Liability Act, 1880** (43 & 44 Vict. c. 42), s. 1, sub-s. 1—*Compensation under Workmen's Compensation Act, 1887—Application to Assess—Court to which to Make Application* (60 & 61 Vict. c. 37), s. 1, sub-s. 4].—The plaintiff, who was of the age of twenty, and was in the employment of the defendant, a farmer, was engaged in working a straw-pressing machine when he received an injury. In an action to recover damages under sect. 1, sub-sect. 1, of the Employers' Liability Act, 1880, upon the ground that there was a defect in the condition of the machine, in that it was not properly fenced, the county court judge found that there was a defect in the machine in that, although perfectly made and not requiring a guard, it was a dangerous machine, and that being so, it was the duty of the defendant to instruct those who used it as to its dangers, there being no foreman to do so, and that he had failed in that duty. He accordingly gave judgment for the plaintiff.

**HELD**—that this did not constitute a defect in the condition of the machine within sect. 1, sub-sect. 1, of the Employers' Liability Act, 1880, and the defendant was entitled to judgment. The plaintiff having applied to the Court to assess compensation under sect. 1, sub-sect. 4, of the Workmen's Compensation Act, 1887, the Court expressed the opinion that the county court judge was the proper tribunal to assess the compensation.

**GREENWOOD v. GREENWOOD, 97 L. T. 771; 24 [T. L. R. 24—Div. Ct.]**

**61. Defective Plant—Stevadore Unloading Ship—Plant Used but Not Belonging to Employer—Employers' Liability Act, 1880** (43 & 44 Vict. c. 42), s. 1, sub-s. 1].—The defendant, who was a master stevedore, contracted with a shipowner to



### Liability of Master for Injury to Servant— *Continued.*

unload a cargo of sugar from his ship. The sugar, which was in bags, was unloaded by means of a derrick attached at one end to the mast by a shackle and pin. While some of the bags were being hoisted out by the derrick the pin came out and the bags fell on the plaintiff, who was employed on the work by the defendant, and injured him. There was evidence that the pin was worn and was not safe for use; and there was evidence that it was usual as between ship-owners and stevedores that the former should provide all the appliances, except ropes, slings, and chains, and that the derrick, shackle and pin belonged to the shipowner. In an action to recover damages under sect. 1, sub-sect. 1, of the Employers' Liability Act, 1880, for negligence in providing defective plant, the county court judge held that the stevedore was not liable for a defect in the ship's tackle, and he withdrew the case from the jury. The Divisional Court affirmed this judgment. On appeal:—

**HELD**—that if a stevedore used plant which did not belong to him, he had cast upon him a duty towards his workmen of taking reasonable care to see that the plant was fit for the purposes for which it was required; and that therefore the case ought to have been left to the jury.

BIDDLE v. HART, [1907] 1 K. B. 649; 76 L. J. [K. B. 418; 97 L. T. 66; 23 T. L. R. 262; 10 Asp. M. C. 469—C. A.]

**62. "Workman"—Stage-manager at Theatre—Duty to Shift Furniture and Side Scenes—Employers and Workmen Act, 1875 (38 & 39 Vict., c. 90), s. 10—Employers' Liability Act, 1880 (43 & 44 Vict., c. 42), s. 8.]**—A person was employed by the owners of a theatre as stage-manager, and it was part of his duty to act as a stage-hand, there being three other stage-hands, and to shift the furniture and the side scenes.

**HELD**—that he was a "workman" within the Employers' Liability Act, 1880.

RUSHBROOK v. GRIMSBY PALACE THEATRE, [ETC., 99 L. T. 19; 24 T. L. R. 617—Div. Ct.]

### 3. Apart from Workmen's Compensation and Employers' Liability Acts.

**63. Common Employment—Music-hall Artists—Negligence—Amendment of Statement of Claim.]**—The plaintiffs were music-hall artists and claimed damages for injuries sustained by them during their performance at the defendant's theatre through the negligence of the defendants' servants. The defence included a plea that the plaintiffs and the said servants were in the common employment of the defendants, and therefore not entitled to recover.

**HELD**—that the doctrine of common employment must prevail, and that an amendment of the statement of claim alleging the contract to have been made with a party other than the defendants could not be allowed as it would deprive the defendants of a legal right.

ATKINSON v. SURREY VAUDEVILLE THEATRE, [LD., Times, March 6th, 1908—Lawrence, J.]

On a second action being brought, when the agreement was alleged to have been made with M., it appeared that M. was the agent of the defendants, and the doctrine of common employment was held to apply. Judgment was given for the defendants.

Times, November 16th, 1908—Ridley, J.

**64. Common Employment—Workman Traveling by Train from Work—Train Belonging to Employers—Accident while Workman in Train—Negligence of Another Employee.]**—The defendants were the owners of two collieries, which communicated with each other, and also of a railway from the collieries to a neighbouring village. The railway was used for the conveyance of coal and materials to and from the collieries, and the defendants provided a train to take their workmen to and from their work at the collieries. The workmen paid nothing for conveyance, and they were under no obligation to travel by the train. The railway was managed entirely by the defendants. The part of the railway between the two collieries passed under a bridge. A mason, who was employed by the defendants to do work at both collieries, was, on the instructions of the defendants' engineer, who was the engineer at both collieries, engaged in building a wall to strengthen the bridge, and for that purpose he had erected a scaffolding close to the line. A workman who was employed by the defendants at one of the collieries was returning home by the railway and was seated on the floor of the carriage with his feet projecting beyond the carriage step. When the train was passing under the bridge his foot struck the scaffolding and he was thrown on the line and killed. In an action against the defendants to recover damages under the Fatal Accidents Act, 1846, the jury found that the accident was caused by the negligence of the mason and of the engineer.

**HELD**—that the negligence was that of a fellow-servant of the deceased workman, and that the defendants were not liable, the accident having happened on the defendants' premises, though the workman had at the time left off work and was on his way home.

COLDRICK v. PARTRIDGE, JONES & Co., LD. [98 L. T. 644; 24 T. L. R. 646—Bray, J.]

**65. Duty Towards Servant—Cab Driver—Driver Missing—Duty to Search For.]**—A servant of the defendants, who were cab proprietors, went out one night in December with his master's cab. Later at night (about 11 p.m.) the horse and cab came home without the driver. There was no indication of any accident having happened. The horse had on former occasions, when left unattended, returned home by itself. One of the defendants, who saw the horse and cab return, went to a public-house in the neighbourhood to look for the driver, but found it closed, and he accordingly returned home. Next morning the driver was found in an unconscious condition, suffering from injuries which indicated that he had fallen from his seat on the cab, and he died in a week, his death being accelerated by exposure. In an action by his widow to recover



**Liability of Master for Injury to Servant—**  
*Continued.*

damages for his death, the county court judge held that there was a duty upon the defendants, who were aware that a horse had returned without a driver, to institute a proper search or to make inquiries, and that they had neglected that duty. He accordingly awarded the plaintiff damages.

**HELD**—that, in the circumstances, there was no duty on the defendants to make a search for the driver, and they were entitled to judgment.

**BOND v. WILSON AND SONS**, 24 T. L. R. 238—  
[—Div. Ct.]

**66. Negligence—Employment of Boys—Evidance of Negligence.**—It is not negligent merely to employ boys in a position in which, being mischievous, they may be injured.

**STONES v. STEINER & Co.**, [1908] W. N. 197  
[—C. A.]

**II. LIABILITY OF MASTER FOR INJURY BY SERVANT: SCOPE OF AUTHORITY.**

*And see* **ANIMALS**, No. 7; **NEGLIGENCE**, No. 10; **TRESPASS**.

**67. Servant of A.—Whether pro hac vice Servant of B.—Master of Fishing Boat Carrying Representative of Fishery Board.**—The Fishery Board for Scotland from time to time arrange with the owners of trawl boats to carry on board their boats an employee of the Fishery Board, who is allowed to collect from the catches, and retain for the use of the Board, specimens of different kinds of fish. In return for this service trawl boats carrying a Fishery Board employee are allowed to fish within restricted waters, and to retain the catches, without rendering themselves liable to a charge of illegal trawling. The Fishery Board employee is entitled to point out the places where he wishes the trawling to be conducted, but neither he nor the Board have any control over the navigation or management of any trawl boats so engaged.

A trawl boat with a Fishery Board representative on board, under an arrangement of the above description, was stranded through the fault of her master, and the Fishery Board representative in consequence died from exposure. To an action by his widow the owner of the trawler pleaded that he was not responsible for the fault of the master, the latter being *pro hac vice* in the service of the Fishery Board.

**HELD**—that the master was not *pro hac vice* the servant of the Fishery Board, and that the defender was liable in damages.

**BURGOYNE v. WALKER**, [1908] S. C. 321—  
[Ct. of Sess.]

**III. CONTRACTS BETWEEN MASTER AND SERVANT NOT RELATING TO PERSONAL INJURIES.**

**67a. Divulging Employer's Secrets — Implied Term of Employment—Injunction.**—The principle on which the Court acts in restraining an employee from divulging matters relating to his

master's business is that there is an implied term of the contract of service not to use to the master's detriment information obtained in the course of the service.

**KIRCHNER & Co. v. GRUBAN**, 53 Sol. Jo. 151—  
[Eve, J.]

**67b. Employee Agreeing not to Give Notice—Injunction not Granted to Restrain Breach.**—A stipulation by a servant not to give notice to leave his master's service is affirmative in substance, although negative in form, and therefore ought not to be enforced by injunction.

*Davis v. Forman* ([1894] 3 Ch. 654; 43 W. R. 168—Kekewich, J.) followed.

**KIRCHNER & Co. v. GRUBAN**, 53 Sol. Jo. 151—  
[Eve, J.]

*See* **TRADE (COVENANTS IN RESTRAINT OF TRADE)**.

**IV. DISMISSAL.**

*See also* **PRESS AND PRINTING**, Nos. 1, 3.

**68. Agreement by Master to Give "Regular Employment" to Servant.**—By an agreement in settlement of a claim under the Workmen's Compensation Act, 1897, the master in addition to agreeing to make immediate payment of a lump sum to the claimant, agreed to give the claimant "regular employment at a fixed weekly wage of 23s." After three years the master dismissed him.

**HELD**—that the agreement did not give the claimant a right to permanent employment so long as he was willing and able to do the work.

**LAWRIE v. BROWN & Co.**, [1908] S. C. 705—  
[Ct. of Sess.]

**69. Wrongful Dismissal—Right of Servant to Totally Repudiate Contract, including Covenant in Restraint of Trade.**—Where a servant is wrongfully dismissed without his service being terminated by giving the agreed notice, he may treat the contract as entirely at an end, whilst retaining his right to sue his master for wrongful dismissal, and ignore a covenant in the contract restraining him from trading on the termination of his engagement.

**GENERAL BILLPOSTING Co., LD. v. ATKINSON**, [1908] 1 Ch. 537; 77 L. J. Ch. 411; 98 L. T. 482; 24 T. L. R. 285; 52 Sol. Jo. 240—C. A. Affirmed 25 T. L. R. 178—H. L.

**V. WAGES : TRUCK ACTS.**

**70. Wages Becoming Due Daily—Payable each Fortnight—Forfeiture—Breach of Contract.**—The plaintiff was a putter in the service of a colliery company, his duty being to draw coal in tubs underground. His wages depended on the number of tubs drawn, and were payable fortnightly on the Friday following the end of each fortnight, a statement of the wages due, called a pay note, being handed to each workman on the preceding day. The total amount of work done each day was ascertained daily. On Thursday, July 12th, 1906, pay notes were handed to the putters

**Wages: Truck Acts—Continued.**

showing the wages due for the fortnight ending on July 7th. A dispute arose as to the amount due to one of the putters, and in consequence on Friday, the 13th, the putters declined to work, thus laying the pit idle. The putters were then informed that they had broken their contracts and forfeited all wages since the conclusion of the previous fortnight, *i.e.*, for July 9th, 10th, 11th and 12th. On the following Monday the putters presented themselves for work, but were refused unless they signed on afresh. By arrangement, however, they resumed work on the next day. The plaintiff claimed for four days' wages, from July 9th to 12th inclusive, and damages for breach of contract in not allowing him to work on the Monday, contending upon the latter point that laying the pit idle for a day or two was, to the knowledge of the defendants, common practice, and did not amount to a repudiation of the contract of service.

**HELD**—that the plaintiff was not entitled to recover for breach of contract, the refusal of the men to work justifying their dismissal; but that as each day's wages became due daily, though not payable until the end of the fortnight, he was entitled to recover the four days' wages.

Decision of Div. Ct. (97 L. T. 98; 23 T. L. R. 408) affirmed.

**PARKIN v. SOUTH HETTON COAL CO.**, 98 L. T. [162; 24 T. L. R. 193; [1908] W. N. 7—C.A.

**VI. SEDUCTION OF SERVANT.**

[No paragraphs in this vol. of the Digest.]

**VII. APPRENTICES.**

**71. Apprentice—Departure of Apprentice to America—No Default by Master—Return of Proportionate Part of Premium.**—An indenture of apprenticeship was made between the defendant, the master, the apprentice's father, the apprentice, and the plaintiff, who paid to the defendant a premium of £10. The indenture contained a covenant by the defendant that he would to the best of his power and ability teach the apprentice his trade, a clause whereby it was agreed that, if the apprentice should absent himself from work without just cause, the defendant would take such legal or other proceedings to compel the attendance of the apprentice as the plaintiff might require, and a further clause providing that, in the case of any breach by the defendant of the covenants and provisions of the indenture, or if it should appear to the plaintiff that from any cause whatever either the defendant or the apprentice was unable to fulfil the conditions contained therein, the defendant should on demand repay to the plaintiff a proportionate part of the premium. During the currency of the apprenticeship, the apprentice was taken by his parents to America. The plaintiff brought this action for the return of a proportionate part of the premium.

**HELD**—that the defendant, although not guilty of any default or breach, was clearly unable to render the service which he was bound

by the terms of the indenture to render, and was therefore liable under the last of the above clauses to return a proportionate part of the premium.

**MORLEY v. BAUMGART**, *Times*, July 20th, 1908 [—C.A.]

**MAYOR.**

*See* MUNICIPAL CORPORATION; ELECTIONS

**MAYOR'S COURT.**

*See* COURTS.

**MEDICINE AND PHARMACY.**

	COL.
I. MEDICAL PRACTITIONERS . . .	406
II. DENTISTS.	
(a) Unregistered Persons . . .	407
(b) Dental Companies . . .	407
[No paragraphs in this vol. of the Digest.]	
(c) In General . . .	407
[No paragraphs in this vol. of the Digest.]	
III. VETERINARY SURGEON . . .	407
IV. SALE OF POISONS . . .	407
[No paragraphs in this vol. of the Digest.]	
<i>And see</i> FOOD AND DRUGS.	

**I. MEDICAL PRACTITIONERS.**

**1. "Practising as an Apothecary"—Minor Surgical Operation—Apothecaries Act, 1815 (55 Geo. 3, c. 194), s. 20.**—The defendant, a fish salesman, was consulted by a fellow salesman in reference to an injury to the latter's thumb, into which a fish bone had penetrated, with the result that a blister formed on the spot. The defendant bathed the thumb and applied to it a plaster composed of various ingredients compounded according to a recipe handed down in his family. For this the defendant charged two guineas. In an action against him by the plaintiff to recover the penalty of £20 under sect. 20 of the Apothecaries Act, 1815, for having acted or practised as an apothecary without having a certificate, the county court judge decided in favour of the defendant, on the ground that what he had done amounted to acting, not as an apothecary, but as a surgeon in a minor surgical case.

**HELD**—that the question was one of fact for the county court judge, and as he had arrived at the conclusion that the defendant had not acted or practised as an apothecary, the appeal from his decision must be dismissed.

**APOTHECARIES SOCIETY v. GREGORY**, 25 [T. L. R. 37—Div. Ct.]

II. DENTISTS.

(a) Unregistered Persons.

2. *Using Description implying Special Qualification to Practise Dentistry*—*Dentists Act*, 1878 (41 & 42 Vict. c. 33), s. 3—*Medical Act*, 1886 (49 & 50 Vict. c. 48), s. 26.]—The words “specially qualified to practise dentistry” in sect. 3 of the *Dentists Act*, 1878, refer to special personal qualifications to practise dentistry and not to the special qualifications or “professional hall-marks” mentioned in other sections of the *Act*.

The appellant, who was not registered under the *Dentists Act*, 1878, and was not a legally qualified medical practitioner, was convicted for having unlawfully taken and used an addition or description—namely, “H. J. Barnes. Finest artificial teeth at moderate prices. Extractions, advice free. Hours 10-7. English and American teeth. Advice free. Painless extractions,” implying that he was specially qualified to practise dentistry. The foregoing description was on the inner door and windows of the appellant’s premises, and his room was fitted as a dentist’s operating room. The appellant admitted that he carried on a dentist’s practice there, but he did not take or use the name or title “Dentist,” either alone or otherwise, or that of “Dental Practitioner.”

HELD—that there was evidence to support the magistrate’s finding that the appellant had committed an offence against sect. 3 of the *Dentists Act*, 1878.

BARNES v. BROWN, 72 J. P. 485 ; 25 T. L. R. 3 ; [53 Sol. Jo. 14 ; [1908] W. N. 205—Div. Ct.

(b) Dental Companies.

[No paragraphs in this vol. of the Digest.]

(c) In General.

[No paragraphs in this vol. of the Digest.]

III. VETERINARY SURGEON.

3. *Unqualified Person—Wrongful Description*—*Veterinary Surgeons Act*, 1881 (44 & 45 Vict. c. 62), s. 17, sub-s. 1.]—The respondent, who was not a member of the Royal College of Veterinary Surgeons, and was not on the register of veterinary surgeons, and did not hold the veterinary certificate of the Highland and Agricultural Society of Scotland, exhibited outside his residence a board on which were displayed the following words : “M. Collinson, Canine Specialist. Dogs and Cats treated for all Diseases.”

HELD—that the respondent had committed an offence against sect. 17, sub-sect. 1, of the *Veterinary Surgeons Act*, 1881, as he had used a description stating that he was specially qualified to practice a branch of veterinary surgery.

ROYAL COLLEGE OF VETERINARY SURGEONS v. COLLINSON, [1908] 2 K. B. 248 ; 77 L. J. K. B. 689 ; 72 J. P. 267 ; 99 L. T. 122 ; 24 T. L. R. 530 ; 52 Sol. Jo. 457—Div. Ct.

IV. SALE OF POISONS.

[No paragraphs in this vol. of the Digest.]

MEETINGS.

See COMPANIES ; CRIMINAL LAW ; TRESPASS.

MEMORANDUM OF ASSOCIATION.

See COMPANIES.

MERCANTILE AGENT.

See AGENCY.

MERCHANDISE MARKS.

See TRADE MARKS AND DESIGNS.

MERCHANT SHIPPING.

See SHIPPING AND NAVIGATION.

MERGER.

See MORTGAGES ; REAL PROPERTY AND CHATELS REAL.

MESNE PROFITS.

See LANDLORD AND TENANT ; MORTGAGES ; REAL PROPERTY AND CHATELS REAL.

METROPOLIS.

	COL.
I. BUILDINGS	
(a) In General . . . . .	409
(b) Building Line . . . . .	
(1) In General . . . . .	410
(2) Projecting Structures . . . . .	411
[No paragraphs in this vol. of the Digest.]	
(c) “Building or Structure” . . . . .	411
(d) Nature of Buildings . . . . .	412
(1) In General . . . . .	412
[No paragraphs in this vol. of the Digest.]	
(2) Dwellings for Working Classes . . . . .	412
[No paragraphs in this vol. of the Digest.]	
(e) Height of Buildings . . . . .	412
(f) Dangerous, Defective, Temporary, and Wooden Structures . . . . .	413
[No paragraphs in this vol. of the Digest.]	
(g) Party Walls . . . . .	413



**Metropolis—Continued.**

II. BYE-LAWS	COL.
(a) Betting in Streets . . . . .	413
[No paragraphs in this vol. of the Digest.]	
(b) Lavatories and Waterclosets . . . . .	413
[No paragraphs in this vol. of the Digest.]	
(c) Lights on Vehicles . . . . .	413
[No paragraphs in this vol. of the Digest.]	
(d) Lodging Houses . . . . .	413
[No paragraphs in this vol. of the Digest.]	
III. DRAINAGE	
(a) Drain or Sewer . . . . .	413
(b) In General . . . . .	414
IV. HACKNEY CARRIAGES . . . . .	415
V. NUISANCES, ETC.	
(a) Offensive Trades . . . . .	415
[No paragraphs in this vol. of the Digest.]	
(b) Removal of Refuse . . . . .	416
[No paragraphs in this vol. of the Digest.]	
(c) Smoke . . . . .	416
[No paragraphs in this vol. of the Digest.]	
(d) In General . . . . .	416
VI. OFFICERS . . . . .	416
[No paragraphs in this vol. of the Digest.]	
VII. RATES . . . . .	416
VIII. SANITARY CONVENIENCES, WATERCLOSETS, ETC. . . . .	416
[No paragraphs in this vol. of the Digest.]	
IX. STREETS	
(a) Breaking Up . . . . .	416
[No paragraphs in this vol. of the Digest.]	
(b) Laying Out . . . . .	416
[No paragraphs in this vol. of the Digest.]	
(c) Obstruction . . . . .	416
[No paragraphs in this vol. of the Digest.]	
(d) Paving and Making Up . . . . .	416
[No paragraphs in this vol. of the Digest.]	
(e) Widening . . . . .	416
(f) In General . . . . .	417
X. WATER SUPPLY . . . . .	418
XI. MISCELLANEOUS . . . . .	419
[No paragraphs in this vol. of the Digest.]	
And see COMMONS; ECCLESIASTICAL LAW; HIGHWAYS, RATES AND RATING, ETC.	

**I. BUILDINGS.****(a) In General.**

**1. Protection against Fire in certain New Buildings—“High Building”**—Deposit of Plans—Time of Deposit—Provision Directory only—Not Condition Precedent to Approval of Plans or Appeal therefrom—*London Building Acts (Amendment) Act, 1905* (5 Edw. 7, c. ccix.), ss. 7, 22, 24.]—The provision in sect. 7, sub-sect. 1, of the *London Building Acts (Amendment) Act, 1905*, the marginal note to which is “Protection against fire in certain new buildings,” as to the time at which the plans therein mentioned shall be deposited, is directory only, and is not a condition precedent to the approval or refusal by

the London County Council of the said plans, or to the owner's right of appeal under sect. 22, sub-sect. 1, of that Act to the tribunal of appeal.

Therefore, even if plans showing means of escape from fire in respect of a high building are not deposited until after the building notice, the Council may consider them, and the owner may appeal against a rejection.

**LONDON COUNTY COUNCIL v. SPINK & SON,**  
[LD., [1908] 2 K. B. 447; 77 L. J. K. B. 855; 72 J. P. 341; 99 L. T. 197; 6 L. G. R. 745—Div. Ct.]

**(b) Building Line.****(1) In General.**

**2. Certificate of Superintending Architect Defining General Building Line in Part of Street—Subsequent Certificate Defining General Building Line in Same Part of Street in Same Manner—Alteration of Building Line by Tribunal of Appeal, Reversing Second Certificate—Conclusive Effect of First Certificate—*London Building Act, 1894* (57 & 58 Vict. c. ccxiii.), s. 22.]**—In 1898 the superintending architect of metropolitan buildings defined the general line of buildings in part of a street in London, and no appeal was brought against his decision. In 1906 the tribunal of appeal under the *London Building Act, 1894*, reversing a certificate of the superintending architect made in 1906, defined another general line of buildings in a portion of the said street including the part for which a general line was defined in 1898. There was no evidence that buildings had been erected in the said part since 1898 which might alter the general line.

**HELD**—that the general line of buildings defined in 1898 was still operative, and that therefore the general line defined in 1906 must be set aside.

Decision of Div. Ct. (71 J. P. 437; 97 L. T. 306; 5 L. G. R. 1070) affirmed.

**LILLEY AND LILLEY AND SKINNER, LD., v. [LONDON COUNTY COUNCIL, 72 J. P. 41; 98 L. T. 110; 6 L. G. R. 126—C. A.]**

**3. General Line of Buildings—Determination of, in Part of a Street—Houses Brought Forward Beyond General Line of Buildings before 1894, by Consent—Houses Brought Forward, as to which no Evidence—*Metropolis Management Act, 1855* (18 & 19 Vict. c. 120), s. 143—*Metropolis Management Amendment Act, 1862* (25 & 26 Vict. c. 102), s. 75—*London Building Act, 1894* (57 & 58 Vict. c. ccxiii.), ss. 22, 26, 27, 216.]**—The superintending architect and the tribunal of appeal under the *London Building Act, 1894*, in determining the general line of buildings in part of a street bordered by houses built before 1862 under sects. 22, 25 of that Act may take into consideration permanent buildings erected on the forecourts of the houses under sect. 75 of the *Metropolis Management Amendment Act, 1862*, by the consent of the Metropolitan Board of Works, beyond the then general line of buildings, and upon conditions, one of which was that the buildings should not be raised more than one storey high.

**Buildings—Continued.**

*Seem*, in determining the general line of buildings they may take into consideration all buildings situate in that part of the street which are not shown to be unlawfully there.

FLEMING *v.* LONDON COUNTY COUNCIL, 72 [J. P. 519; 53 Sol. Jo. 48—Div. Ct.]

4. *Land Leased by Railway Company—Coal Office—Crystal Palace South London Junction Railway Act, 1862 (25 & 26 Vict. c. cxliv.), s. 79—London Building Act, 1894 (57 & 58 Vict. c. cxxiii.), s. 31.*—The respondents, on land leased to them by a railway company for the purpose, erected a coal order office, consisting of a brick building which went beyond the general line of buildings certified by the superintendent architect of metropolitan buildings. The land had been acquired by the railway company under a private Act passed in 1862, which provided that nothing in the Act should take away any of the rights or powers of the Metropolitan Board of Works, the predecessors of the appellants.

HELD (Bray, J., dissenting)—that the respondents were liable to a penalty; *per* Channell, J., on the ground that sect. 31 of Part III. of the London Building Act, 1894, which provides that nothing in that part of the Act shall affect the exercise of any powers conferred upon any railway company by any special Act of Parliament for railway purposes, did not protect the respondents from the penalty prescribed by sect. 200, sub-sect. 3, of the London Building Act, 1894 (as amended by the London Building Act Amendment Act, 1898), as the railway company's private Act did not authorise the erection of buildings on that margin of the land which went beyond the general building line; *per* Sutton, J., on the ground that the respondents had failed to show that the railway company were exercising some special power conferred by some special Act.

LONDON COUNTY COUNCIL *v.* COAL CO-OPERATIVE SOCIETY, LD., 72 J. P. 68; 98 L. T. 580; 24 T. L. R. 209; 6 L. G. R. 387—Div. Ct.]

**(2) Projecting Structures.**

[No paragraphs in this vol. of the Digest.]

**(c) "Building or Structure."**

5. *Box under Footway for Repairing Electric Cables—Building Notice—London Building Act, 1894 (57 & 58 Vict. c. cxxiii.), s. 145 (a).*—The appellants, who supplied electric light under the powers granted by the County of London (Northern Extensions) Electric Lighting Order, 1897, acting under those powers, constructed beneath the footway in Leather Lane, for the purpose of repairing and renewing their electric cables, a street box, 27in. × 27in. × 30in., with a concrete floor, brick walls, and an iron and concrete lid. The appellants, before beginning the work, served the notices required by sect. 13 of the above Order on the Postmaster-General, the Holborn Borough Council and the London County Council, but they did not serve on the district surveyor the building notice required by

sect. 145 (a) of the London Building Act, 1894, and the magistrate convicted them of a breach of that section.

HELD—that the conviction must be affirmed, as the size of the box was only a circumstance to be taken into consideration by the magistrate in deciding whether the box was a structure, and as the service of the notices required by sect. 13 of the Order did not dispense with the necessity of serving a building notice as required by sect. 145 (a) of the London Building Act, 1894.

*Whitechapel Board of Works v. Crow* ((1901) 65 J. P. 549; 84 L. T. 595—Div. Ct.; and *Charing Cross, etc. Corporation v. Woodthorpe*, (1903) 67 J. P. 286; 88 L. T. 772—Div. Ct.), followed.

COUNTY OF LONDON ELECTRIC SUPPLY CO., LD. [*v.* PERKINS, 72 J. P. 133; 98 L. T. 870; 24 T. L. R. 327; 52 Sol. Jo. 281; 6 L. G. R. 344—Div. Ct.]

**(d) Nature of Buildings.****(1) In General.**

[No paragraphs in this vol. of the Digest.]

**(2) Dwellings for Working Classes.**

[No paragraphs in this vol. of the Digest.]

**(e) Height of Buildings.**

6. *Distance from Opposite Side of Street—Building with Recesses—Variation in Height and Frontage—London Building Act, 1894 (57 & 58 Vict. c. cxxiii.), ss. 5, 49.*—Sect. 49 of the London Building Act, 1894, provides that no new building shall, without the consent of the London County Council, be erected on the side of a street made since August 7th, 1862, and of a less width than fifty feet, so that the height of such building shall exceed the distance of the front or nearest external wall of such building from the opposite side of the street.

Whether an erection is to be regarded as one building or as several buildings for this purpose is a question of fact. If it is to be regarded as one building, then on measuring its height it is not permissible to take into consideration the distance of the front wall of each separate part of the building from the opposite side of the street; and, where a small portion of the building is recessed, so that the front wall of that portion is at a greater distance from the opposite side of the street than the general line of frontage, the general line of frontage must be taken as the determining factor.

Further, the section cannot be evaded by building a series of front walls in steps one behind the other.

One side of a newly erected block of flats situate at the corner of two streets fronted a new street forty feet wide. The greater part of this building, where it fronted this street, was built flush with the line of the street, but the centre portion was recessed and the front wall of this portion was twenty feet distant from the line of the street and was sixty feet high. The front wall of another portion was forty feet high to the base of a gable (which by the terms of the Act is not taken into account in measuring the height of front walls), and from the further end of the

**Buildings—Continued.**

roof of this gable, which ran back horizontally for a distance of twenty feet, there rose up an external wall to the height of twenty feet, measured from the base of the gable.

**HELD**—that the erection was one building having one line of frontage and one front wall, which exceeded forty feet in height, and that it contravened the section.

Decision of Kekewich, J. ([1907] 2 Ch. 23; 76 L. J. Ch. 259; 71 J. P. 182; 96 L. T. 351; 23 T. L. R. 263) reversed.

**ATTORNEY-GENERAL v. METCALF AND GREIG**, [1908] 1 Ch. 327; 77 L. J. Ch. 261; 72 J. P. 97; 97 L. T. 737; 24 T. L. R. 53—C. A.

**(f) Dangerous, Defective, Temporary, and Wooden Structures.**

[No paragraphs in this vol. of the Digest.]

**(g) Party Walls.**

See also **EASEMENTS**, No. 10.

**7. Difference between Building Owner and Adjoining Owner—Reference to Surveyors—Compensation for Damage to Trade—Jurisdiction to Award—London Building Act, 1894** (57 & 58 Vict. c. cxxiii.) ss. 88—91.]—Where surveyors are appointed under sect. 91 of the London Building Act, 1894, to settle a difference between a building owner and an adjoining owner under sect. 90 of that Act, with respect to the raising of a party-wall, they have no jurisdiction to award compensation to the adjoining owner for anything but structural damage, they cannot consider, *e.g.*, loss of trade arising from the execution of the work.

Decision of Div. Ct. ([1906] 2 K. B. 767; 75 L. J. K. B. 995; 70 J. P. 545; 95 L. T. 540; 22 T. L. R. 820) affirmed.

**ADAMS v. MARYLEBONE BOROUGH COUNCIL**, [1907] 2 K. B. 822; 77 L. J. K. B. 1; 71 J. P. 465; 97 L. T. 593; 23 T. L. R. 702—C. A.

**II. BYE-LAWS.****(a) Betting in Streets.**

[No paragraphs in this vol. of the Digest.]

**(b) Lavatories and Waterclosets.**

[No paragraphs in this vol. of the Digest.]

**(c) Lights on Vehicles.**

[No paragraphs in this vol. of the Digest.]

**(d) Lodging Houses.**

[No paragraphs in this vol. of the Digest.]

**III. DRAINAGE.****(a) Drain or Sewer.**

**8. Combined Operation—Order of Vestry—Reception of Public Drainage into Drain—Sewer—Nuisance—"Intimation Notice" Threatening Proceedings—Compliance under Protest—Work Done Voluntarily or under Compulsion—Right to Recover Expenses from Local Authority—Damages—Public Health (London) Act, 1891** 54 & 55 Vict. c. 76), ss. 3, 4—*Metropolis Local*

*Management Act, 1855* (18 & 19 Vict. c. 120), s. 250.]—A group of premises drained by a combined operation discharged their drainage through a common pipe or conduit into a public sewer. The pipe being defective and causing a nuisance, the borough council served "intimation notices" on the several occupiers of the said premises (among whom were the plaintiffs), requiring them to repair the pipe and abate the nuisance, and threatening proceedings if the said notice should not be complied with. The plaintiffs denied liability, alleging that the said pipe was a public sewer repairable by the borough council, but did the necessary work under protest. It was found that the said pipe in fact received certain public drainage as well as the drainage of the said group of premises, and was therefore a "sewer." In an action by the plaintiffs to recover the cost of the work done and damages for injury to their premises caused by the defective condition of the said pipe:

**HELD**—that although service of an intimation notice does not by itself amount to compulsion, where work is done in compliance with such a notice under protest, or without admitting liability, such work is done under compulsion and not voluntarily, and the expenses of doing such work can be recovered from the local authority which was in fact liable to do it.

*Oliver v. Camberwell Borough Council* ((1904) 68 J. P. 165—Div. Ct.) discussed.

**WILSON'S MUSIC AND GENERAL PRINTING [Co. v. FINSBURY BOROUGH COUNCIL, [1908]** 1 K. B. 563; 77 L. J. K. B. 471; 72 J. P. 37; 98 L. T. 574; 6 L. G. R. 349—Channell, J.

**9. Combined Operation—Unauthorised Connection—Effect of—Metropolis Management Act, 1855** (18 & 19 Vict. c. 120), s. 250.]—An unauthorised connection cannot make a "drain" a "sewer" as between an individual and an authority if it was wrongfully made by him, or by a person through whom he claims otherwise than as a purchaser for value without notice.

*Semble*, in the future, this exception as to purchasers for value without notice may be abrogated.

**WILSON'S MUSIC AND GENERAL PRINTING CO. [v. FINSBURY BOROUGH COUNCIL, [1908]** 1 K. B. 563; 77 L. J. K. B. 471; 72 J. P. 37; 98 L. T. 574; 6 L. G. R. 349—Channell, J.

**(b) In General.**

**10. "Leaking" Drain—Whether Necessarily a "Nuisance"—"Defective" Drain—Complaints—Metropolis Management Act, 1855** (18 & 19 Vict. c. 120), ss. 82, 85—*Public Health (London) Act, 1891* (54 & 55 Vict. c. 76), ss. 2, 4, 40.]—On receipt of an anonymous complaint the inspector of a metropolitan sanitary authority visited certain premises in March, but found no evidence of a nuisance. On May 17th, the authority having served the occupier of the premises with a notice under sect. 82 of the *Metropolis Management Act, 1855*, and sect. 40 of the *Public Health (London) Act, 1891*, entered and opened up the ground, when it was found that a drain there was made with



**Drainage—Continued.**

clay joints, which clay had entirely perished. Notices having been served on the owner of the premises in May and June requiring him to abate a nuisance, under the Act of 1891, on his failing to comply with the notices, a summons was taken out, and in October the magistrate, finding that there was "a leaking drain," made an order upon him to abate the nuisance under sect. 4 of the Public Health (London) Act, 1891. Ordinary chemical tests in April, August and September had disclosed no nuisance.

**HELD**—that the magistrate having found that there was "a leaking drain," had not merely found that there was a defective drain but that there was a leaking drain which was a "nuisance" within the meaning of sect. 4 of the Public Health (London) Act, 1891.

*Quære*, whether a drain which is merely defective can constitute such a nuisance.

**FARMER v. LONG**, 72 J. P. 91; 6 L. G. R. 368—Div. Ct.

**IV. HACKNEY CARRIAGES.**

**11. Motor-Cab—Regulation of Commissioner of Police—Liability to Penalty—London Hackney Carriages Act, 1843** (6 & 7 Vict. c. 86), s. 29—*London Hackney Carriages Act, 1850* (13 & 14 Vict. c. 7), s. 4—*London Hackney Carriage Act, 1853* (16 & 17 Vict. c. 33), ss. 19, 21.]—The respondent, who was a motor-cab driver, was summoned for wilfully disregarding a regulation made by the Commissioner of Metropolitan Police that the first two drivers of motor-cabs at a standing must be with their cabs and be ready to be hired at once by any person. This regulation was made under sect. 4 of the London Hackney Carriages Act, 1850, but that section does not provide any penalty for breach of any regulation so made.

The London Hackney Carriage Act, 1853, provides by sect. 19 that for every offence against the provisions of this Act, for which no special penalty is appointed, the offender shall be liable to a penalty of 40s., and by sect. 21 that the Act is to be construed as one with the London Hackney Carriages Act, 1843, and the London Hackney Carriages Act, 1850.

**HELD**—that the effect of sects. 19 and 21 of the Act of 1853 was to create one code of law for the regulation of hackney carriages, that sect. 21 of the Act of 1853 was a general penalty section which would apply to a breach of any provision of the three Acts which was not specifically provided for elsewhere, and that a breach of regulations made under an Act was a breach of the Act itself, and that, therefore, if the offence was proved the respondent was liable to the penalty provided by sect. 19 of the London Hackney Carriage Act, 1853.

**WILLINGALE v. NORRIS**, 72 J. P. 495; 25 [T. L. R. 19—Div. Ct.]

**V. NUISANCES, etc.**

**12. Removal of Refuse—Trade Refuse—Difference or Dispute as to what is—Decision of Magistrate—Right of Appeal—Public Health (London) Act, 1891** (54 & 55 Vict. c. 76), s. 33.]—Where a

dispute arises between a sanitary authority and the owner or occupier of any premises within their district as to whether any particular refuse is or is not trade refuse within the meaning of the Public Health (London) Act, 1891, and the matter is brought before a magistrate under s. 33 (2) of that Act, the decision of the magistrate upon the question is final, and no appeal will lie from it by way of special case.

**Decision of C. A.** ([1907] 1 K. B. 910; 76 L. J. K. B. 482; 71 J. P. 200; 96 L. T. 535; 23 T. L. R. 387; 5 L. G. R. 545) affirmed.

**WESTMINSTER CORPORATION v. GORDON [HOTELS, LD., [1908] A. C. 142; 77 L. J. K. B. 520; 72 J. P. 201; 98 L. T. 681; 24 T. L. R. 402—H. L.]**

**(a) Offensive Trades.**

[No paragraphs in this vol. of the Digest.]

**(b) Removal of Refuse.**

[No paragraphs in this vol. of the Digest.]

**(c) Smoke.**

[No paragraphs in this vol. of the Digest.]

**(d) In General.**

[No paragraphs in this vol. of the Digest.]

**VI. OFFICERS.**

[No paragraphs in this vol. of the Digest.]

**VII. RATES.**

*See title RATES AND RATING.*

**VIII. SANITARY CONVENIENCES, WATER-CLOSETS, etc.**

[No paragraphs in this vol. of the Digest.]

**IX. STREETS.****(a) Breaking up.**

[No paragraphs in this vol. of the Digest.]

**(b) Laying Out.**

[No paragraphs in this vol. of the Digest.]

**(c) Obstruction.**

[No paragraphs in this vol. of the Digest.]

**(d) Paving and Making up.**

[No paragraphs in this vol. of the Digest.]

**(e) Widening.**

**13. Highway—Dedication to Public—Road Authority—Widening of Roadway—Narrowing Footway—Statutory Powers—Delegation—57 Geo. 3, c. xxix. (Michael Angelo Taylor's Act), s. 52.]**—In 1883 building land in the metropolis was demised to C. for a term of eighty-two years, and L., under an agreement with C., built several shops on a part of the land which fronted a highway. The shops were not built to the edge of the demised land, but a strip of land three feet wide was left between the front wall of the shops and the public footway. Later in 1883 L. applied to the local authority to pave the footway in front of his shops right up to the building line, and the local authority informed him that on the strip of land being given up to form part of the public footway the footway would be

*Streets—Continued.*

paved. L. made no reply, and the footway was paved up to the wall of the shops. In the meantime C., who had no knowledge of L.'s application to the local authority, had granted L. separate under-leases of the shops for eighty years and had also assigned to him for value the head lease, with a proviso against merger. In 1898 C. repurchased the head lease for value from L.'s successors in title. In 1906 the London County Council, under the powers of a special Act, converted a horse tramway in the highway in question into an electrical tramway, and in connection with this work they widened the road and reduced the width of the footway and took up the pavement (including the pavement of three-foot strip of land) in front of the shops. This work was done under an agreement made in May, 1906, with the borough council, whereby the borough council in consideration of the reconstruction of the tramway consented to the narrowing of the footway and agreed to pay part of the cost of paving, which was to be done by the county council.

In an action by C. and the assignees of some of the under-leases against the London County Council for an injunction and damages in respect of (1) the taking up of the pavement of the strip of land, (2) the reduction of the width of the footway, the defendants pleaded in answer to the first claim that the strip of land had been dedicated to the public by L. in 1883, and was part of the public footway, and in answer to the second that the borough council had power to authorise the defendants to make the reduction in the width of the footway, and that the work was done by the defendants under the authority of the borough council given by the agreement of May, 1906.

**HELD—(1),** on the evidence that, whatever claim the local authority might have had against L., there had been no dedication by the freeholders, and that the plaintiffs were entitled to relief in respect of the claim for trespass; but (2) that sect. 52 of Michael Angelo Taylor's Act empowered the borough council, as the road authority, to alter the division of the roadway into a footway and carriageway; that they must be taken by this agreement to have authorised the defendants to execute these alterations on their behalf, and that this was not a delegation of their statutory powers; consequently that in respect of the narrowing of the footway the plaintiff's claim failed.

Decision of Neville, J. ([1907] 1 Ch. 704; 76 L. J. Ch. 313; 71 J. P. 219; 96 L. T. 614; 23 T. L. R. 366; 5 L. G. R. 577) varied.

**CORSELLIS v. LONDON COUNTY COUNCIL**, [1908]

[1 Ch. 13; 77 L. J. Ch. 120; 71 J. P. 561; 98 L. T. 475; 24 T. L. R. 80; 6 L. G. R. 78

—C. A.

**(f) In General.**

**14. Maintenance of Main Roads by Borough Council—Contribution by County Council—Determination of Local Government Board—London Government Act, 1899** (62 & 63 Vict. c. 14), ss. 6 (1), 7 (1), 28 (2), (3).—Sect. 7 (1) of the London Government Act, 1899, enacts that where

Y.D.

any duty is transferred from the London County Council to a borough council by or under the Act the County Council shall contribute to the borough council such amount (if any) as may be finally determined by the Local Government Board. Sect. 28 (3) enacts that when the Local Government Board are authorised by the Act to determine any matter, it shall be at their option to determine the matter as arbitrators or otherwise. An application was made by several metropolitan borough councils to the Local Government Board to determine the amount to be contributed by the County Council in respect of the maintenance of main roads which was transferred to the borough councils by sect. 6 (1) of the Act. The Local Government Board decided "otherwise than as arbitrators" that no contribution should be made.

**HELD**—that the Court could not interfere by mandamus.

**R. v. LOCAL GOVERNMENT BOARD, EX PARTE [HACKNEY BOROUGH COUNCIL, 72 J. P. 211; 6 L. G. R. 665—Div. Ct.]**

**X. WATER SUPPLY.**

*See also* WATERWORKS.

**15. Affixing Pipe—No Consent by Water Board—Adjoining Houses—Waterworks Clauses Act, 1863** (26 & 27 Vict. c. 93), s. 19—*Regulations under the Metropolis Water Act, 1871* (34 & 35 Vict. c. 113), s. 17.—The appellant was summoned by the Metropolitan Water Board, for unlawfully affixing a pipe to the communication or service pipe at No. 40, D. Street, without the consent of the respondents, contrary to sect. 19 of the Waterworks Clauses Act, 1863. It was proved that the appellant was the owner of Nos. 40 and 42, D. Street, which adjoined one another, and formed part of a continuous row of houses. Originally each house had a separate communication pipe, and had been supplied by the respondents with water direct from the main, but owing to the appellant not having remedied certain defects in the fittings at No. 42, the respondents cut off the supply from No. 42 at a time when the house was unoccupied. The appellant then, without the consent of the respondents, affixed the pipe within No. 42 to that within No. 40, thus making one communication pipe for the two houses. The respondents had demanded the water rate from the appellant for the period in question, but on the day of the hearing of the summons it had not been paid. The appellant relied upon No. 5 of the regulations made under sect. 17 of the Metropolis Water Act, 1871, which regulation provides that as far as is consistent with the special Acts of the company, in the case of a group or block of houses the water rates of which are paid by one owner, the owner may, at his option, have one sufficient communication pipe for such group or block.

**HELD**—that the above regulation was no justification for the appellant having taken the law into his own hands, and that he had committed the offence charged.

**KYFFIN v. METROPOLITAN WATER BOARD, 72 [J. P. 517—Div. Ct.]**

## XI. MISCELLANEOUS.

[No paragraphs in this vol. of the Digest.]

## MIDWIVES.

See PUBLIC HEALTH.

## MILITIA.

See ROYAL FORCES.

## MILK.

See FOOD AND DRUGS.

## MINES, MINERALS, AND QUARRIES.

	COL.
I. MINING LEASE . . . . .	419
II. MINING REGULATIONS.	
(a) Coal Mines . . . . .	420
(b) Fencing Abandoned Mines . . . . .	421
[No paragraphs in this vol. of the Digest.]	
(c) Quarries . . . . .	421
[No paragraphs in this vol. of the Digest.]	
III. RESERVATION OF MINERALS . . . . .	421
IV. SUPPORT . . . . .	422
V. MISCELLANEOUS . . . . .	422
[No paragraphs in this vol. of the Digest.]	

And see COMPULSORY PURCHASE,  
No. 10; DAMAGES; EASEMENTS;  
GAS; HIGHWAYS, No. 12; LAND-  
LORD AND TENANT, No. 11; LIM-  
ITATION OF ACTION; RAILWAYS;  
WATERWORKS, No. 3.

## I. MINING LEASE.

1. *Covenant Running with the Land—Covenant to Pay Compensation for Damage by Workings—Covenant to Pay to Persons not Parties to Lease—Owners for Time Being—Heirs and Assigns of Original Owners—Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 5—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 58.*—By a covenant in a lease from the owners of the coal under certain land the lessee (which term was to include his executors, administrators, and assigns) covenanted "with the lessors and as separate covenants with others the owners or owner, occupiers or occupier, for the time being of the said lands hereinbefore described, or any part thereof . . . to pay or cause to be paid to the said lessors or other the covenantees or covenantee, compensation for damage or injury whatsoever that hath already been or shall hereafter be done or occasioned by the said lessee in or by reason of the winning or working of the mines or seams of coal." The "others," *i.e.*, the

surface owners, were not parties to the lease. The working having caused damage to the surface, the trustees under the will of one of the original surface owners and the assigns of another original surface owner, claimed compensation under the covenant in the lease from the lessee's assigns (who were in liquidation) and his executors.

HELD—that, although the surface owners were not parties to the lease, the benefit of the covenant ran with the land by virtue of sect. 5 of the Real Property Act, 1845; that, as it related to land, it must be deemed to have been made with the "heirs and assigns" of the original surface owners, who were included in the term "owners for the time being" and were therefore existing persons at the date of the lease; and that therefore all the defendants could recover.

FORSTER *v.* ELVET COLLIERY CO.; QUINN *v.* ELVET COLLIERY CO.; SEED *v.* ELVET COLLIERY CO.; MORGAN *v.* ELVET COLLIERY CO., [1908] 1 K. B. 629; 77 L. J. K. B. 521; 98 L. T. 736; 24 T. L. R. 265; 52 Sol. Jo. 224  
—C. A.

Affirmed, 25 T. L. R. 166; 53 Sol. Jo. 149;  
[1908] W. N. 250—H. L.

## II. MINING REGULATIONS.

## (a) Coal Mines.

2. *Checkweigher—Appointment of Checkweigher—"Mine"—Definition of—Separate Seams—Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 13 (1).*—A mine under one management consisted of two separate seams, worked by separate shafts. The mineral gotten from each shaft was weighed at separate weigh boxes, though sometimes some mineral from the lower seam was weighed at the upper seam weigh box.

HELD—that the two seams constituted one mine for the purposes of sect. 13 (1) of the Coal Mines Regulation Act, 1887, and in consequence that the men of both seams were together entitled to elect the checkweighers of the two seams.

THORPE *v.* DAVIES, [1908] 2 K. B. 750; 77 [L. J. K. B. 939; 72 J. P. 418; 99 L. T. 362—  
Sutton, J.

3. *Ventilation—Illness of Manager—Duty of Agent—Contravention of Rules—Reasonable Means to Prevent—Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), ss. 49 (rr. 1, 4, (i)), 50, 75.*—The appellant, who was the agent of a coal mine, was summoned under sects. 49, (r. 1), and 50 of the Coal Mines Regulation Act, 1887, for not causing an adequate amount of ventilation to be constantly produced in the mine, which was a mine to which the Act applied. The mine had a manager and an under-manager, and the general rules contained in sect. 49 of the Act had been duly published. It was proved that on a certain date, in consequence of the want of ventilation, the gas and fire-damp had not been diluted and rendered harmless so as to cause the parts where men were working and passing to be in a fit state for such purposes.



**Mining Regulations—Continued.**

There was no direct evidence of what the cause of the inadequate ventilation was, except at one place where a brattice, which had been badly put up, was defective, and in consequence did not cause air to go to the working face of the coal there. For some months prior to the date in question, the manager had from ill-health been unable to discharge his duties as manager, and to go down the mine. In consequence of the manager's illness, the appellant had been conferring two or three times a week with the under-manager, but he did not peruse the overmen's daily reports, and he had not been down the mine for several weeks prior to the day in question. It was admitted that the deputy-overman's reports to the under-manager for the day in question stated that the ventilation was good.

The Justices found as a fact that in view of all the circumstances and in particular the inability of the manager to go down the mine, the appellant had not taken all reasonable means by enforcing to the best of his power r. 1 of sect. 49 of the Act as a regulation for the working of the mine to prevent non-compliance therewith.

HELD—that as the onus of proof was cast on the appellant by sect. 50 of the Act, the Justices were justified in arriving at the above conclusion and in convicting the appellant.

[ANDERSON v. ATKINSON, 72 J. P. 359; 99 L. T. [22—Div. Ct.]

**(b) Fencing Abandoned Mines.**

[No paragraphs in this vol. of the Digest.]

**(c) Quarries.**

[No paragraphs in this vol. of the Digest.]

**III. RESERVATION OF MINERALS.**

**4. China Clay—Purchase of Land by Railway Company for their Undertaking—Statutory Reservation of Minerals—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 77, 79.]**—Kaolin, or china clay, where it does not constitute the land soil itself, is a mineral within the statutory reservation of minerals contained in sect. 77 of the Railways Clauses Consolidation Act, 1845.

GREAT WESTERN RY. CO. v. CARPALLA UNITED [CHINA CLAY CO., LD., AND ANOTHER, 77 L. J. Ch. 673; 72 J. P. 457; 24 T. L. R. 804; 52 Sol. Jo. 683; [1908] W. N. 178—Eve, J.]

Affirmed, 25 T. L. R. 91; [1908] W. N. 234—C. A.

**5. Sand.]**—In construing a reservation by deed of mines and minerals, the Court must take into consideration all the circumstances of the particular case, the true nature of the transaction between the parties, and their real object as evidenced by the subject-matter of the grant. On the construction of such a reservation:

HELD—that sand, which was covered by only

a thin layer of soil, and was virtually "the land," was not a mineral.

STAPLES v. YOUNG, [1908] 1 I. R. 135—C. A.

**IV. SUPPORT.**

**6. Overlying and Underlying Seams—Right to Work all the Underlying Minerals—Implied Right to Support.]**—A lease of certain strata of coal granted to the plaintiffs contained a reservation to the lessors entitling them to work, or permit to be worked, seams underlying those demised to the plaintiffs. At the time the lease to the plaintiffs was granted, it was common knowledge to all persons conversant with mining that it would be impossible to work the lower seams without causing damage by subsidence to the upper seams.

HELD—that the reservation in the plaintiffs' lease permitting the working of the lower seams must be read with the necessary implication—viz., that such working would cause a corresponding subsidence in the upper seams; and, accordingly, that the defendants as lessees of the lower seams were entitled to work those seams, although by doing so they let down the overlying minerals.

Decision of Neville, J. ([1908] 2 Ch. 475; 77 L. J. Ch. 746; 24 T. L. R. 752) reversed.

BUTTERLEY CO., LD., v. NEW HUCKNALL [COLLIERY CO., LD., 25 T. L. R. 45; 53 Sol. Jo. 45; [1908] W. N. 221—C. A.]

**7. Working—Support—Letting down Level of Surface.]**—Where the evidence showed that a seam of coal in a mine could not be worked without causing subsidence of the surface, and that this fact must have been known to the parties and their agents, the Court refused to grant an injunction restraining lessees from working the coal so as to cause a subsidence of the surface.

Butterley Co., Ltd. v. New Hucknall Colliery Co., Ltd. (*supra*), applied.

LOCKER-LAMPSON v. THE STAVELEY COAL AND [IRON CO., LD., 25 T. L. R. 136—Joyce, J.]

**V. MISCELLANEOUS.**

[No paragraphs in this vol. of the Digest.]

**MISDEMEANORS.**

See CRIMINAL LAW.

**MISREPRESENTATION AND FRAUD.**

COL.

I. FRAUD . . . . . 423

**II. MISREPRESENTATION.**

(a) Fraudulent Misrepresentation . 424

[No paragraphs in this vol. of the Digest.]

**Misrepresentation and Fraud—Continued.**

II. MISREPRESENTATION—Continued.	COL.
(b) Innocent Misrepresentation	424
(c) Misrepresentation as to Nature of Documents	424

And see ACTION; AGENCY, Nos. 3, 4; AUCTIONS; BANKRUPTCY; BUILDERS, No. 2; CONTRACTS, No. 19; DEEDS; INFANT, No. 1; INSURANCE; MASTER AND SERVANT; PUBLIC AUTHORITIES; TRADE MARKS.

**I. FRAUD.**

1. *Fraud—Constructive Notice—Independent Solicitor—Purchase for Value.*—A., who from boyhood was a person of dull intelligence (but as to whom the Court held that at material times there was no evidence showing him to be incapable of executing deeds), came into possession in 1880 of an unincumbered estate yielding a net rental of about £630. F., who had been A.'s father's agent, was continued by A. in the same position. In 1884 the property was subject to admittedly valid mortgages for £3,000 and £781. By deed of April 17th, 1884, A. mortgaged all his property to F. to secure advances to be made by F. as his land agent or manager up to £1,000. By deed of conveyance, dated September 22nd, 1892, reciting the preceding mortgages, and that £1,000 was due to F. on his mortgage, besides £653 alleged to be due on accounts stated and settled between A. and F., A. in consideration of the release by F. of all his claims, in pursuance of a recited agreement to that effect, and in further consideration of an annuity of £200 for his life charged on the property, and the use for his life of the dwelling-house, which F. covenanted to keep in repair, conveyed all his property to F.; but the deed contained a proviso that the mortgage of April 17th, 1884, was to remain existing. A. afterwards became surety for F. on bills and notes to the N. bank constituting about one-sixth of F.'s indebtedness to the bank. F., representing that the bank was pressing for payment, induced A. to agree to postpone his re-charge to his own liability to the bank. But by deed of mortgage to the bank dated August 21st, 1896, reciting the previous mortgages, and that F.'s mortgage of April 17th, 1884, was subsisting and £1,000 due thereon, A. being made a party to the deed, F. assigned to the bank his mortgage for the full sum of £1,000, and A. and F. mortgaged all the property to the bank by demise for the purpose of postponing all A.'s rights and claims, not merely to his own liability as F.'s surety, but to all F.'s liabilities on his account with the bank, for which the mortgage was at the bank's pleasure to be a continuing security. A. had the benefit in connection with the transaction of 1892 of the advice of an eminent firm of Dublin solicitors, who, however, did not apparently fathom F.'s capacity for fraud, or A.'s ineptitude to resist it.

HELD—that the deeds of 1892 and 1896 were fraudulent and should be set aside, and that the bank were not purchasers without notice.

HELD ALSO—that the mortgage of April 17th, 1884, should stand to the extent of any advances bona fide made.

ALDRITT v. MACONCHY, [1908] 1 I. R. 333—[C. A.]

**II. MISREPRESENTATION.****(a) Fraudulent Misrepresentation.**

[No paragraphs in this vol. of the Digest.]

**(b) Innocent Misrepresentation.**

2. *Misrepresentation as to Pictures—Innocent Misrepresentation by Auctioneer—Purchaser Stopping Cheque—Auctioneer's Right to Sue on.*—The owner of pictures erroneously, but not fraudulently, told an auctioneer that they were painted by certain well-known artists. The auctioneer so described them in his sale catalogue. The auctioneer sold the pictures and settled accounts with the owner. At a later date the purchaser returned the pictures and stopped his cheque.

HELD—that the auctioneer was entitled to sue on the cheque given by the purchaser as the catalogue had been prepared on the instructions of the vendor, and the misrepresentation made by the auctioneer was made in good faith by him, and as the return of the pictures and the stopping of the cheque by the purchaser did not put the parties in the same position as they were before.

Decision of Pickford, J. (98 L. T. 44) affirmed. HINDLE v. BROWN, 98 L. T. 791—C. A.

**(c) Misrepresentation as to the Nature of Documents.**

See DEEDS.

**MISTAKE.**

And see ARBITRATION; AUCTION; BANKERS; BANKRUPTCY; DEEDS; WILLS.

1. *Compromise—Setting Aside—Mistake as to the Law Applicable—Bonâ fides.*—A compromise will not be set aside merely because one party to it put forward a claim which was in law incapable of being supported, if it was put forward in good faith.

HOLSWORTHY URBAN DISTRICT COUNCIL v. [HOLSWORTHY RURAL DISTRICT COUNCIL, [1907] 2 Ch. 62; 76 L. J. Ch. 389; 71 J. P. 330; 97 L. T. 634; 23 T. L. R. 452—Warrington, J.]

**MONEY AND MONEY-LENDERS.**

I. CLAIMS FOR INTEREST	COL. 425
------------------------	----------

II. LOANS BY MONEY-LENDERS	425
----------------------------	-----

(a) Bargains with Expectant Heirs 425  
[No paragraphs in this vol. of the Digest.]

**Money and Money-lenders—Continued.****II. LOANS BY MONEY-LENDERS—Continued.**

(b) Concealment of Identity . . . 425

[No paragraphs in this vol. of the Digest.]

**III. THE MONEY-LENDERS ACT, 1900.**

(a) Scope of Act . . . 425

(b) Registration . . . 425

(c) Reopening Transaction . . . 427

(d) Miscellaneous . . . 427

**IV. APPROPRIATION OF PAYMENTS . 428**

And see BANKRUPTCY, Nos. 15, 26;  
EVIDENCE; JUDGMENT; PRACTICE  
AND PROCEDURE.

**I. CLAIMS FOR INTEREST.**

See also COMPANIES, No. 53.

1. *Interest—Decision Reversed in House of Lords—Action on Marine Policy—Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), ss. 28, 29.*

—In an action upon a policy of marine insurance claiming for a total loss of the ship insured, the House of Lords, reversing the judgment of the Court of Appeal and of the Judge at the trial, held that the value of the wreck ought to be taken into account in ascertaining whether the ship was a constructive total loss, and that upon that basis there was a constructive total loss of the ship entitling the plaintiffs to recover, and remitting the cause to the High Court to do what was just and consistent with their judgment. The House of Lords said nothing about interest.

HELD—that the assured ought to have interest on the sum due from date of the judgment of the trial.

MACBETH & Co. v. MARITIME INSURANCE CO.,  
[24 T. L. R. 559—C. A.]

**II. LOANS BY MONEY-LENDERS.**

(a) Bargains with Expectant Heirs.

[No paragraphs in this vol. of the Digest.]

(b) Concealment of Identity.

[No paragraphs in this vol. of the Digest.]

**III. THE MONEY-LENDERS ACT, 1900.**

(a) Scope of Act.

2. "*Money-lender*"—Definition—Lending Money to Friends—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 6.]—Whether a person is carrying on business as a money-lender is in each case a question of fact.

It is not enough to bring a person within the purview of the Money-lenders Act, 1900, to show that he has on several occasions lent money at remunerative rates of interest; to bring him within the Act a certain degree of system and continuity about his transactions must be shown.

NEWTON v. PYKE, 25 T. L. R. 127—Walton, J.

(b) Registration.

3. *Taking Mortgage Otherwise than in Registered Name—Void Transaction—Right to a*

*Declaration—Imposing Term of Repaying Money Advanced—Money-lenders Act (63 & 64 Vict. c. 51), s. 2.*—A money-lender, in the course of his business as such, took a mortgage as security for an advance otherwise than in his registered name. The mortgagor entered into a scheme of arrangement with his creditors which was approved by the Court, under which the plaintiff was appointed trustee, and one of the scheduled debts was that due upon the mortgage. The trustee brought an action for a declaration that the mortgage was void under sect. 2 of the Money-lenders Act, 1900.

HELD—that the Court would make a declaration to that effect, though no consequential relief was claimed; and, in making the declaration, it would not impose the condition that the mortgagor should repay the money advanced, inasmuch as the plaintiff was not claiming any equitable relief.

Lodge v. National Union Investment Co.  
([1907] 1 Ch. 300; 76 L. J. Ch. 187; 96 L. T. 301; 23 T. L. R. 187—Parker, J.) distinguished.

Decision of Eve, J. ([1908] 2 Ch. 612; 24 T. L. R. 795; 52 Sol. Jo. 661) affirmed.

CHAPMAN v. MICHAELSON, [1908] 25 T. L. R.  
[101; [1908] W. N. 241—C. A.]

4. *Transacting Business otherwise than at Registered Address—Carrying on Business—Isolated Transaction—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2.*—The plaintiff, who was a money-lender with a registered address, met the defendants at a house which was not his registered address, and made an advance to them there, taking from them a promissory note payable at his registered address. The plaintiff, except for this transaction, transacted his business at his registered address.

HELD—that, notwithstanding this isolated transaction, the plaintiff carried on his money-lending business at his registered address within the meaning of sect. 2, sub-sect. 1 (b), of the Money-lenders Act, 1900, and that therefore the note was valid.

KING v. TURNBULL, 24 T. L. R. 434—Law-  
[rance, J.]

5. *Transacting Business otherwise than at Registered Address—Promissory Note Signed at Borrower's Address—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2, sub-s. 1 (b).*—The plaintiff, who was a registered money-lender, called upon the defendant at the latter's place of business with reference to a proposed loan, but no arrangement was come to, and the defendant then called upon the plaintiff at his registered office, but did not see him. The defendant thereupon wrote a letter addressed to the plaintiff at his registered office about a loan of £100 or £200, and in reply thereto the plaintiff called upon the defendant at the latter's office, and terms were there arranged and an advance was made, and the defendant signed a promissory note there.

HELD—that the business was carried on at the



**The Money-lenders Act, 1900—Continued.**

plaintiff's registered address, notwithstanding that it was completed at the defendant's office.

KING *v.* MASSEY, 24 T. L. R. 710—Darling, J.

See also No. 8, *infra*.

**(c) Reopening Transaction.**

6. "*Harsh and Unconscionable*"—*Excessive Interest—Substantial Security*—"Carry on the Money-lending Business" at Registered Address—*Isolated Transaction Completed Elsewhere*—*Money-lenders Act, 1900* (63 & 64 Vict. c. 51), ss. 1 (1); 2 (1) (b).—A money-lending transaction was re-opened, under sect. 1, subsect. 1, of the Money-lenders Act, 1900, where the Court came to the conclusion that, the borrower being under the necessity of raising a sum of money at short notice, the money-lender took advantage of that necessity to induce him to sign a promissory note payable in three months with interest at the rate of 44 per cent. per annum, the primary security being an equitable mortgage of real property, which was sufficient security for the advance.

*Quære*, whether the carrying out of a single money-lending transaction at a place which was not the registered address of the money-lender is a breach of sect. 2, subsect. 1 (b), of the Act.

BLAIR *v.* BUCKWORTH, 24 T. L. R. 474—C. A.

7. "*Harsh and Unconscionable*"—*Excessive Interest*.—Transaction re-opened on the ground that the interest was excessive having regard to the circumstances of the case—the knowledge on the part of the plaintiffs of the temporary difficulties of the defendant, the position of the defendant in life, the financial position of the defendant's father, and the terms upon which the defendant stood with him, and the amount of the defendant's furniture and stock.

KING *v.* BARNETT, 25 T. L. R. 52—Coleridge, J.

8. *Harsh and Unconscionable Interest—Loan Including Balance of Previous Loans—Loans Regarded as One Transaction—Money-lenders Act, 1900* (63 & 64 Vict. c. 57), s. 1.—The defendant executed a promissory note by which he promised to make thirty-five weekly payments of £2 each. The consideration was £38 in cash, £20 interest, and a balance of £12 in respect of a former loan. There had been two previous loans. The defendant now contended that the three loans should be regarded as one transaction, and that, if so regarded, the rate of interest was harsh and unconscionable and such as entitled him to relief and the re-opening of the transaction.

HELD—that, as the second and third loans included a balance outstanding from the first, all three transactions should be regarded as one whole, and that under the circumstances the defendant had paid enough and was entitled to the relief prayed for.

ELDRIDGE AND ANOTHER *v.* BROSSARD, *Times*, [January 27th, 1908—Darling, J.]

**(d) Miscellaneous.**

9. *Action for Money Lent—Defence under Money-lenders Act—Part of Principal Admittedly*

*Due—Summary Judgment—R. S. C., Ord. 14, r. 4—Money-lenders Act, 1900* (53 & 54 Vict. c. 51), s. 1.—Where a plaintiff sues for money lent and applies for summary judgment under Ord. 14, and the defendant sets up a defence under the Money-lenders Act, 1900, but admits that he has not repaid all the money actually advanced, the proper course is to allow the plaintiff to sign judgment for the amount so admitted to be due without interest, and to give leave to defend as to the residue of the claim.

WELLS *v.* ALLOTT ([1904] 2 K. B. 842; 73 L. J. K. B. 1023; 20 T. L. R. 799—C. A.) explained and distinguished.

LAZARUS *v.* SMITH, [1908] 2 K. B. 266; 77 L. J. [K. B. 791; 99 L. T. 77; 24 T. L. R. 592; 52 Sol. Jo. 481—C. A.]

**IV. APPROPRIATION OF PAYMENTS.**

10. *Rule as to Appropriation—"Account Current."*—The rule of law as to appropriation of payments applies to an "account current" only. A firm of auctioneers rendered an account to a customer setting forth in a column in order of date, cattle, etc., sold to the customer, and cash advances made to him, and in another column, below the first, in order of date, the payments made by the customer to the auctioneers. The columns were each added up, and the balance was struck by deducting the amount of the second column from the amount of the first.

HELD—that the account was not an "account current" to which the rule as to the appropriation of payments applied.

HAY *v.* TORBET, [1908] S. C. 781—Ct. of Sess.

See also BANKERS, No. 1.

**MONOPOLIES.**

See PATENTS.

**MONTH.**

See LANDLORD AND TENANT; TIME.

**MONUMENTS.**

See CHARITIES; ECCLESIASTICAL LAW; WILLS.

**MORTGAGE.**

	COL.
I. ACCOUNTS . . . . .	430
(No paragraphs in this vol. of the Digest.)	
II. ASSIGNMENTS . . . . .	430
(No paragraphs in this vol. of the Digest.)	

Mortgage—Continued.	COL.
III. CONSTRUCTION AND OPERATION	430
[No paragraphs in this vol. of the Digest.]	
IV. EQUITABLE MORTGAGES.	
(a) General . . . . .	430
[No paragraphs in this vol. of the Digest.]	
(b) By Deposit . . . . .	430
[No paragraphs in this vol. of the Digest.]	
V. EQUITY OF REDEMPTION . . . . .	430
[No paragraphs in this vol. of the Digest.]	
VI. FIXTURES . . . . .	430
VII. FORECLOSURE . . . . .	431
[No paragraphs in this vol. of the Digest.]	
VIII. FRAUD . . . . .	431
[No paragraphs in this vol. of the Digest.]	
IX. FURTHER ADVANCES . . . . .	431
[No paragraphs in this vol. of the Digest.]	
X. GENERAL . . . . .	431
XI. INTEREST . . . . .	432
[No paragraphs in this vol. of the Digest.]	
XII. LEASES.	
(a) General . . . . .	432
[No paragraphs in this vol. of the Digest.]	
(b) Goodwill . . . . .	432
[No paragraphs in this vol. of the Digest.]	
XIII. MARRIED WOMEN . . . . .	432
[No paragraphs in this vol. of the Digest.]	
XIV. PARTNERSHIP . . . . .	432
[No paragraphs in this vol. of the Digest.]	
XV. PAYMENTS. . . . .	432
[No paragraphs in this vol. of the Digest.]	
XVI. POLICIES OF LIFE ASSURANCE . . . . .	432
[No paragraphs in this vol. of the Digest.]	
XVII. POWER OF SALE . . . . .	432
[No paragraphs in this vol. of the Digest.]	
XVIII. PRACTICE . . . . .	432
[No paragraphs in this vol. of the Digest.]	
XIX. PRIORITIES.	
(a) General . . . . .	433
(b) Notice . . . . .	434
[No paragraphs in this vol. of the Digest.]	
(c) Possession of Title Deeds . . . . .	434
[No paragraphs in this vol. of the Digest.]	
XX. RECEIVER . . . . .	434
XXI. REDEMPTION.	
(a) Accounts and Costs . . . . .	434
(b) Clogging . . . . .	435
[No paragraphs in this vol. of the Digest.]	
(c) Consolidation . . . . .	435
XXII. RESTRICTIVE COVENANTS . . . . .	435
[No paragraphs in this vol. of the Digest.]	
XXIII. SALE . . . . .	435
XXIV. SETTLED LANDS . . . . .	436
[No paragraphs in this vol. of the Digest.]	
XXV. SOLICITOR MORTGAGEE . . . . .	436

XXVI. SURETY . . . . .	437
[No paragraphs in this vol. of the Digest.]	
XXVII. TRANSFER . . . . .	437
[No paragraphs in this vol. of the Digest.]	
XXVIII. TRUSTEES . . . . .	437
[No paragraphs in this vol. of the Digest.]	

And see BANKRUPTCY; BILLS OF SALE;  
BUILDING SOCIETIES; EXECUTORS;  
INFANTS; LANDLORD AND TENANT;  
LIMITATION OF ACTIONS, Nos. 2, 3;  
MONEY AND MONEY-LENDERS; REAL  
PROPERTY; REVENUE (STAMP  
DUTY); SHIPPING; WILLS.

## I. ACCOUNTS.

[No paragraphs in this vol. of the Digest.]

## II. ASSIGNMENTS.

[No paragraphs in this vol. of the Digest.]

## III. CONSTRUCTION AND OPERATION

[No paragraphs in this vol. of the Digest.]

## IV. EQUITABLE MORTGAGES.

### (a) General.

[No paragraphs in this vol. of the Digest.]

### (b) By Deposit.

[No paragraphs in this vol. of the Digest.]

## V. EQUITY OF REDEMPTION.

[No paragraphs in this vol. of the Digest.]

## VI. FIXTURES.

1. *Trade Fixtures—Hire-purchase Agreement—Mortgagor in Possession—Rights of Mortgagee and Owner of Fixtures Respectively.*—The presence in a mortgage deed of a covenant that the mortgagor will not remove any fixtures without the written consent of the mortgagee renders it impossible to imply the ordinary right of a mortgagor in possession to allow trade fixtures to be put up and removed so long as they are removed before the mortgagee takes possession.

The mortgage of a laundry contained such a covenant as is mentioned above. Trade machinery was erected in it under a hire-purchase agreement. An instalment of the price being in arrear, the owner of the machinery removed it.

HELD—that the mortgagee had a cause of action against him for the value of the machinery and damages for its removal.

*Gough v. Wood & Co.* ([1894] 1 Q. B. 713; 63 L. J. Q. B. 564; 70 L. T. 297; 42 W. R. 469—C. A.) distinguished.

*ELLIS v. GLOVER AND HOBSON, LD.*, [1908] 1 [K. B. 388; 77 L. J. K. B. 251; 98 L. T. 110—C. A.]

2. *Trade Fixtures—Hire-purchase Agreement—Printing Machine—Mortgage of Lease—Entry of Mortgagee into Possession.*—A machine which is kept in position by its own weight, and does not require fixing, is not a fixture, even though it is attached to and driven by fixed mechanism

**Fixtures—Continued.**

and though its removal would cause some damage to the building.

NORTHERN PRESS AND ENGINEERING CO. *v.* [SHEPHERD, 52 Sol. Jo. 717—Eve, J.]

Settled on appeal. See *Times*, November 27th, 1908.

**VII. FORECLOSURE.**

[No paragraphs in this vol. of the Digest.]

**VIII. FRAUD.**

[No paragraphs in this vol. of the Digest.]

**IX. FURTHER ADVANCES.**

[No paragraphs in this vol. of the Digest.]

**X. GENERAL.**

**3. Charge of Debts and Legacies—Implied Power to Sell or Mortgage—Beneficial Devise in Fee to One Executor—Mortgage by him to Raise Legacies—Liability of Mortgagee to See to Application of Money.**—If land is devised in fee beneficially to one of several executors, subject to a general charge of debts and legacies, he can sell or mortgage it and give a good receipt for the purchase money.

He need not expressly purport to sell or mortgage in his capacity of executor, and even if the money is expressed to be required for payment of legacies, the purchaser or mortgagee is not bound to see to its application.

*Johnson v. Kennett* ((1835), 3 My. & K. 624, 630); *Forbes v. Peacock* ((1846), 1 Ph. 717, 721); *Stroughill v. Anstey* ((1852), 1 D. M. & G. 635); *Corser v. Cartwright* ((1875), L. R. 7 H. L. 731, 736) and *In re Venn and Furze's Contract* ([1894] 2 Ch. 101; 63 L. J. Ch. 303; 70 L. T. 312; 42 W. R. 440—Stirling, J.) applied.

IN RE HENSON, CHESTER *v.* HENSON, [1908] 2 [Ch. 356; 77 L. J. Ch. 598; 99 L. T. 336—Eady, J.]

**4. Charge on Property for Legacy to Another—Mortgage by Executor being also Residuary Legatee—Rights of Legatee.**—A testator, who died in 1885, by his will left all his property to his four sons by his first wife, subject to a charge for a legacy in favour of his four sons by his second wife. The legacy remained unpaid. The four elder sons in 1890 deposited the title deeds of part of the property with a bank as a security for advance, and, in 1889, they executed a form of mortgage of the property to the bank. The bank, if they had made an investigation of title, would have obtained cognisance of the will which created the charge. The mortgagors practised no concealment.

HELD—that as the four younger sons were legatees and not merely creditors and as the bank had constructive notice of the charge, the claim of the four younger sons must prevail over the mortgage of the bank.

*Graham v. Drummond* ([1896] 1 Ch. 968; 65 L. J. Ch. 472; 74 L. T. 417; 44 W. R. 596; 12 T. L. R. 319—Romer, J.) distinguished.

THE BANK OF BOMBAY AND ANOTHER *v.* SULE-MAN SOMJI AND OTHERS, 24 T. L. R. 840; 52 Sol. Jo. 727—P. C.]

**5. Executors Paying Off Debt—Gift of Part of Mortgage Property Inter Vivos—Liability of Donee to Contribute Towards Paying Off Debt—Paramount Charge—No Covenants for Title.**—D. to secure an overdraft deposited with his bank the deeds of his leasehold premises and other securities executing a deed of charge and memorandum of deposit. He subsequently assigned the leasehold premises to his wife by a voluntary deed containing no reference to the charge or memorandum and no covenants for title, express or implied.

By his will he left all his property in trust for his wife and children. His executors thereupon paid off the bank's debt, and asked the widow, as assignee of the leaseholds, to contribute.

HELD—that she was under no liability to do so, the charge being one created by her assignor and not one paramount to his own title.

*Ker v. Ker* ((1869), Ir. R. 4 Eq. 15) explained and distinguished.

*In re Jones* ([1893] 2 Ch. 461; 62 L. J. Ch. 996; 69 L. T. 45—North, J.) distinguished.

IN RE DARBY, RENDALL *v.* DARBY, [1907] 2 Ch. [465; 76 L. J. Ch. 689; 97 L. T. 900—Warrington, J.]

**6. Mortgagee's Costs—Copies of Deeds in Possession of Mortgagee as Tenant for Life—Mortgagee Taking Possession—Notices to Tenants—Charges for Drawing Notices.**—A mortgagee who obtains possession of deeds as tenant for life is entitled to hold them as mortgagee.

Where a mortgagee takes possession and serves the tenants with notice he is not entitled to charge for drawing more than one notice.

The precedent No. 48 in Scott's "Guide to Costs," vol. 1, p. 105, is in accordance with the settled practice.

IN RE TWEEDIE'S TAXATION, 53 Sol. Jo. 118; [1908] W. N. 257—Eve, J.]

**XI. INTEREST.**

[No paragraphs in this vol. of the Digest.]

**XII. LEASES.****(a) General.**

[No paragraphs in this vol. of the Digest.]

**(b) Goodwill.**

[No paragraphs in this vol. of the Digest.]

**XIII. MARRIED WOMEN.**

[No paragraphs in this vol. of the Digest.]

**XIV. PARTNERSHIP.**

[No paragraphs in this vol. of the Digest.]

**XV. PAYMENTS.**

[No paragraphs in this vol. of the Digest.]

**XVI. POLICIES OF LIFE ASSURANCE.**

[No paragraphs in this vol. of the Digest.]

**XVII. POWER OF SALE.**

[No paragraphs in this vol. of the Digest.]

**XVIII. PRACTICE.**

[No paragraphs in this vol. of the Digest.]



## XIX. PRIORITIES.

## (a) General.

7. *Building Society Mortgage—Statutory Receipt—Successive Mortgages*—"Person for the Time being Entitled to the Equity of Redemption"—*Building Societies Act, 1874* (37 & 38 Vict. c. 42), s. 42.]—D., the owner of property, conveyed it to a building society by way of mortgage to secure the payment of a sum of money. In June, 1905, the owner's bank advanced him money to pay off the amount due to the society, which he did on the spot, and the society handed the title deeds to the bank. A few days later they handed to the bank the mortgage with the usual statutory receipt indorsed thereon under sect. 42 of the Building Societies Act, 1874. On the earlier date (i.e., the day of payment off) the owner gave to the bank a memorandum of equitable charge, and agreed on request to execute a legal mortgage to the bank.

In December, 1905, the owner purported to execute by means of a forged conveyance a first legal mortgage of the property to the defendant, who did not know of the bank's title. A year later the owner conveyed the property to the plaintiffs by way of mortgage to secure an advance, which was applied in paying off the debt to the bank, and the bank handed over all the deeds, including the mortgage, with the society's receipt thereon, to the plaintiffs.

HELD—that upon the statutory receipt being given by the society the legal estate vested in the person having the best right to call for it—namely, the bank and not the owner of the property, for the agreement to give the bank a legal mortgage if asked for did not amount to a contract that the legal estate should vest in D., and that therefore the plaintiffs had priority over the defendant.

CROSBIE-HILL v. SAYER, [1908] 1 Ch. 866; 77 L. J. Ch. 466; 99 L. T. 267; 24 T. L. R. 442—Parker, J.

8. *Devise on Trust—Beneficiary Mortgaging his Equitable Interest—Bona Fide Alienation by a "Devisee"—Priority of Mortgagee Over Testator's Unsatisfied Creditors—Debts Recovery Act, 1830* (11 Geo. 4 & 1 Will. 4, c. 47), ss. 6, 8—*Administration of Estates Act, 1833* (3 & 4 Will. 4, c. 104).]—An equitable life tenant of realty settled by a will is a "devisee" within sects. 6, 8 of the Debts Recovery Act, 1830.

If, therefore, such a life tenant sells or mortgages his equitable life interest *bona fide* and for good value before his testator's creditors commence an administration action, his alienee has priority over such creditors.

Coope v. Cresswell (1866), L. R. 2 Ch. 112, 122—*Dictum* of Lord Chelmsford, L. C.) explained and followed.

In re Hedgely ((1886), 34 Ch. D. 379; 56 L. J. Ch. 360; 56 L. T. 19; 35 W. R. 472—North, J.) applied.

British Mutual Investment Co. v. Smart ((1875),

L. R. 10 Ch. 567; 44 L. J. Ch. 695; 32 L. T. 849; 23 W. R. 800—C. A.) applied.

Decision of Joyce, J. (98 L. T. 369) reversed.

IN RE ATKINSON, PROCTOR v. ATKINSON, [1908] 2 Ch. 307; 77 L. J. Ch. 766; 99 L. T. 174—C. A.

## (b) Notice.

[No paragraphs in this vol. of the Digest.]

## (c) Possession of Title Deeds.

[No paragraphs in this vol. of the Digest.]

## XX. RECEIVER.

9. *Floating Charge—Assets in Jeopardy—Appointment of Receiver—Writ Issued Before Money Due.*]—Where a floating charge is given over the property of a company, and it is proved that the assets, the subject-matter of the charge, are in jeopardy:

*Seemle*, the Court has power to appoint a receiver, though the money secured by the charge is not due; and then, the security having crystallised by the appointment of a receiver, to make an order for the realisation of the security.

Bonham v. Newcomb ((1684), 1 Vern. 232) discussed.

A holder of a debenture secured by a floating charge, issued a writ claiming realisation of his security and the appointment of a receiver. The money secured was not due, no interest was in arrear, and on an interim application for a receiver an order was refused, there being no proof that the security was in jeopardy. The principal then became due and was not paid. Thereupon the plaintiff moved again for the appointment of a receiver, as did also another debenture holder who issued his writ a few hours before the principal became due, but after the company announced its inability to pay.

HELD—that the plaintiff had a right to issue his writ before the money became due, and was now entitled to a receiver, although his first application had been refused.

IN RE CARSHALTON PARK ESTATE, L.D., [GRAHAM v. THE COMPANY, TURNELL v. THE COMPANY, [1908] 2 Ch. 62; 77 L. J. Ch. 550; 99 L. T. 12; 24 T. L. R. 547; 15 Manson, 228—Warrington, J.

## XXI. REDEMPTION.

## (a) Accounts and Costs.

10. *Redemption Action—Sales Under Powers—Mortgages Overpaid—Costs of Account—Set-off of Costs—Simple Interest—Date from which Balance of Mortgagees' Costs Deducted from Balance of Account.*]—When mortgagees have gone into possession and, having sold under powers of sale in their mortgage deeds, a surplus remains in their hands, but they nevertheless make claims of various amounts as due to them from the representative of their mortgagor, and state a wrong date as that on which they have taken possession, they will, in an action for redemption brought by the legal personal representative of their mortgagor more than

**Redemption—Continued.**

nine years after his death, to which the Statutes of Limitation are pleaded, be held by their conduct to have forfeited their otherwise absolute right to costs, and will be given no costs down to judgment, except as to a particular issue as to which the action was dismissed, but, in such circumstances, will not be ordered to pay any costs to that date. If on taking the accounts under the judgment the mortgagees, notwithstanding the fraud of their agent prevents them ascertaining the truth, persist that a balance is due to them, they must pay the costs of action subsequent to judgment, subject to a set-off of the costs of the particular issue, and simple interest at 4 per cent. on the surplus balance from the date when they were overpaid. Further, if the balance on taxation of costs should prove to be in the mortgagees' favour, the balance of costs ought to be deducted from such surplus balance and the interest thereon as at the date of the writ in the action, inasmuch as no costs could be incurred until the action was commenced, and not as on the date when they were first fully paid.

HEATH v. CHINN, 98 L. T. 855; [1908] W. N. 120—Eve, J.

**(b) Clogging.**

[No paragraphs in this vol. of the Digest.]

**(c) Consolidation.**

**11. Consolidation — Mortgage in Name of Trustee—Different Mortgages of Different Properties by Different Mortgagors—Equities of Redemption Assigned to Same Person.**—The doctrine of consolidation does not apply where mortgages of two different properties have been made by different mortgagors, even though the equitable title to both such properties was vested in one only of the mortgagors, and even though such mortgagor subsequently takes an assignment of the equity of redemption in the property not originally mortgaged by him.

SHARP v. RICKARDS, [1908] W. N. 234—[Neville, J.]

**XXII. RESTRICTIVE COVENANTS.**

[No paragraphs in this vol. of the Digest.]

**XXIII. SALE.**

**12. Statutory Notice Requiring Payment—Three Months' Default—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), ss. 19, 20.**—After the money secured by a mortgage had become payable the mortgagee served on the mortgagor a notice requiring payment at the expiration of three months from the date thereof.

HELD—(1) that it was a good notice under sect. 20 of the Conveyancing Act, 1881, as a preliminary to the exercise of the statutory power of sale; and

(2) That the three months mentioned in sect. 20 ran from the service of the notice.

Schwyn v. Garfitt ((1888), 38 Ch. D. 273; 57

L. J. Ch. 609; 59 L. T. 233; 36 W. R. 513—C. A.) distinguished.

BARKER v. ILLINGWORTH, [1908] 2 Ch. 20; 77 [L. J. Ch. 581; 99 L. T. 187—Eady, J.]

**XXIV. SETTLED LANDS.**

[No paragraphs in this vol. of the Digest.]

**XXV. SOLICITOR MORTGAGEE.**

**13. Mortgage by Client—Statement in Deed that Money has been Lent—Money not in Fact Lent—Sub-mortgage to Third Person—Estoppel—Priority.**—A solicitor induced the plaintiff, who was a client of his, to execute a mortgage of certain property to him in order to provide a sum of £2,500 for the purpose, as he alleged, of being lent to another client at an increased rate of interest. The mortgage deed stated that £2,500 had been lent by the solicitor to the plaintiff, but, in fact, no sum at all was lent. The solicitor then executed a sub-mortgage of the property for £1,200 in favour of the defendant, who had no notice of the fraud, and absconded. The plaintiff claimed that the mortgage and sub-mortgage were void, and that the property should be reconveyed to him:—

HELD—that as the plaintiff had executed the mortgage deed for the purpose of its being used for raising money for his own advantage, and as money was raised upon it from the defendant, the plaintiff was estopped from saying as against the defendant that he had not received the money.

Decision of Joyce, J. (97 L. T. 167; 23 T. L. R. 604) reversed.

POWELL v. BROWNE, 97 L. T. 854; 24 T. L. R. 71—C. A.

**14. Mortgages from Client—Accounts Settled—Profit Costs—Overcharges for Interest—Re-opening Accounts—Limitation Act, 1623 (21 Jac. 1, c. 16).**—A solicitor since 1883 financed a client, who was a builder, advancing him money and taking mortgages upon the land acquired and built upon as security for his advances with interest and his costs. The client was not represented by any other solicitor. From time to time the accounts were submitted to the client, and they were agreed to and signed by him, some of them more than six years before action. In the accounts the solicitor always charged profit costs in respect of the mortgages to himself, but no bills of costs were rendered. There were also certain instances of interest overcharged by error. The solicitor died in 1905. In an action by the executors for foreclosure of two of the mortgages the client counterclaimed to reopen the accounts on the ground of overcharges.

HELD—that, considering the relation between the parties, and the character of the errors, from which it might be expected that the errors proved in some cases would appear in all, the client was entitled to the relief claimed in respect of all accounts. That the Statute of Limitations did not apply; and that the client was entitled to have the solicitor's costs charged in such

**Solicitor Mortgagee—Continued.**

accounts taxed upon the footing that the solicitor was not entitled to charge profit costs in respect of any mortgage before the Mortgagees' Legal Costs Act, 1895, regard being had in such taxation to any agreement as to costs appearing by such accounts to have been come to between the parties.

CHEESE *v.* KEEN, [1908] 1 Ch. 245; 77 L. J. Ch. [163; 98 L. T. 316; 24 T. L. R. 138—Neville, J.

**XXVI. SURETY.**

[No paragraphs in this vol. of the Digest.]

**XXVII. TRANSFER.**

[No paragraphs in this vol. of the Digest.]

**XXVIII. TRUSTEES.**

[No paragraphs in this vol. of the Digest.]

**MORTMAIN ACTS.**

*See* CHARITIES; REAL PROPERTY.

**MOTOR CARS.**

*See* HIGHWAYS; STREET TRAFFIC.

**MUNICIPAL CORPORATIONS.**

*See* LOCAL GOVERNMENT.

**MUSIC HALLS.**

*See* THEATRES, MUSIC HALLS AND SHOWS.

**MUSICAL COPYRIGHT.**

*See* COPYRIGHT AND LITERARY PROPERTY.

**NAME.**

*See* WILLS.

**NATAL.**

*See* DEPENDENCIES AND COLONIES.

**NATURALISATION AND DENIZATION.**

*See* ALIENS.

**NAVIGATION.**

*See* SHIPPING AND NAVIGATION.

**NAVIGABLE WATERS.**

*See* WATERS AND WATERCOURSES.

**NAVY.**

*See* ROYAL FORCES.

**NEGLIGENCE.**

	COL.
I. CONTRACTORS AND SUB-CONTRACTORS . . . . .	438
[No paragraphs in this vol. of the Digest.]	
II. CONTRIBUTORY NEGLIGENCE . . . . .	438
[No paragraphs in this vol. of the Digest.]	
III. DANGEROUS EMPLOYMENT . . . . .	438
IV. DEFECTIVE PLANT, ETC. . . . .	438
V. LOCAL AUTHORITIES . . . . .	438
VI. LICENSEES AND VISITORS . . . . .	440
[No paragraphs in this vol. of the Digest.]	
VII. LORD CAMPBELL'S ACT . . . . .	440
[No paragraphs in this vol. of the Digest.]	
VIII. ONUS OF PROOF . . . . .	440
[No paragraphs in this vol. of the Digest.]	
IX. PROXIMATE CAUSE . . . . .	440
[No paragraphs in this vol. of the Digest.]	
X. RAILWAY MANAGEMENT . . . . .	440
XI. TRESPASSERS . . . . .	441
XII. VEHICLES—OWNERS AND DRIVERS . . . . .	442
XIII. MISCELLANEOUS . . . . .	442

*And see* ANIMALS; BAILMENT, No. 2; BUILDERS; CARRIERS; EVIDENCE, No. 1; HIGHWAYS; LANDLORD AND TENANT, No. 1; MASTER AND SERVANT; NUISANCE; PUBLIC HEALTH; SHIPPING; TRAMWAYS; WATERWORKS.

**I. CONTRACTORS AND SUB-CONTRACTORS.**

[No paragraphs in this vol. of the Digest.]

**II. CONTRIBUTORY NEGLIGENCE.**

[No paragraphs in this vol. of the Digest.]

**III. DANGEROUS EMPLOYMENT.**

*See* MASTER AND SERVANT, I. (3).

**IV. DEFECTIVE PLANT, etc.**

*See* MASTER AND SERVANT, I. (3).

**V. LOCAL AUTHORITIES.**

1. Highway—Manhole of Sewer Projecting Above Surface—Improper Construction by



**Local Authorities—Continued.**

*Sanitary Authority—Liability for Accident.*] The predecessors of an urban district council in 1893 constructed a sewer with manholes under a main road repairable by the county. In 1906 the cover of one of the manholes projected above the granite setts surrounding it, and the said setts projected above the surrounding surface of the roadway. The plaintiff when riding a motor cycle was upset by the said manhole and injured, and brought an action against the urban district council for damages. The jury found that the manhole was defective and was the cause of the accident to the plaintiff, and that the defects in the manhole were owing to improper construction; and the Judge thereupon held that the plaintiff was entitled to recover damages from the urban district council.

The Court of Appeal came to the conclusion that there was no evidence of improper construction, but ordered a new trial upon the point whether there had been negligence in maintaining the manhole.

WINSLOWE v. BUSHEY URBAN DISTRICT  
[COUNCIL, 72 J. P. 64—Coleridge, J.  
72 J. P. 259—C. A.]

**2. Highway—Repair of—Evidence of Negligence—Whole Road Done at Once—Fire Inches of Granite over Road—Road not Scarified—No Warning Notice—Action for Damage to Horse that has pulled Weight over Granite.**—In an action for damages for negligence for injury alleged to have been caused to a horse that died after pulling a loaded waggon over a stretch of country road which was being laid with granite by the defendants, the particulars of negligence alleged were (1) that the road was not closed; (2) that no warning notice was erected; (3) that the road had not been scarified; (4) that the road was not laid in halves; (5) that the road was laid with granite to so great a depth as five inches. There was evidence to support these allegations. It appeared also that the stretch of country road was about 130 feet in length, part of it rolled, part of it rolled but not rolled in, and the rest of it unrolled, or only rolled once. The waggoner put his horses to the task without asking asking for help from the men with the steam-roller that was there or otherwise. The waggon could not turn round in the lane. The jury found (1) that there was negligence on the part of the defendants' servants; (2) that the plaintiff and his driver could not, by the exercise of reasonable care, have avoided the consequences of the defendants' negligence; and (3) that the death of the plaintiff's horse was the natural and necessary consequence of the defendants' negligence; and judgment was entered for the plaintiff.

On appeal, per Alverstone, L. C. J., on the facts of the case, there was no evidence to go to the jury, as, although there was evidence that the defendants had been negligent by way of misfeasance, there was no evidence that the death of the plaintiff's horse was the natural and necessary consequence of the defendants' acts.

Per Sutton, J., there was evidence to go to the jury on all the three questions left to them.

Accordingly the appeal was dismissed.

TORRANCE v. ILFORD URBAN DISTRICT  
[COUNCIL, 72 J. P. 526—Div. Ct.]

**3. Local Authority Owning Public Park—River Flowing Through—Duty to Protect—Child Drowned.**—A child was drowned in a river flowing through a public park. In an action by its father alleging a duty upon the local authority to fence the river.

HELD—that if the authority made their park safe for persons of average intelligence, there was no further duty on them to protect children from risks arising only out of their own childishness and helplessness.

STEVENSON v. GLASGOW CORPORATION, [1908]  
[S. C. 1034—Ct. of Sess.]

**VI. LICENSEES AND VISITORS.**

[No paragraphs in this vol. of the Digest.]

**VII. LORD CAMPBELL'S ACT.**

[No paragraphs in this vol. of the Digest.]

**VIII. ONUS OF PROOF.**

[No paragraphs in this vol. of the Digest.]

**IX. PROXIMATE CAUSE.**

[No paragraphs in this vol. of the Digest.]

**X. RAILWAY MANAGEMENT.**

**4. Carriage Door not Closed Before Train Starts—Injury by Door to Passenger on Platform.**—A pursuer alleged that, after he had alighted from a train and was still standing on the platform, the train moved on, and an open carriage door struck and injured him; that it was the duty and invariable practice of railway companies to close the doors before restarting their trains; and that their neglect in this respect caused his injuries. The Court of Session held that there was no relevant averment of negligence, and dismissed the action.

HELD—that the pleading disclosed a possible case of negligence fit to be tried.

Decision of Ct. of Sess. ([1908] Sess. Cas. 48) reversed.

TOAL v. NORTH BRITISH RY. CO., [1908] A. C. 352; [1908] S. C. (H. L.) 29; 45 Sc. L. R. 683; 77 L. J. P. C. 119; 99 L. T. 173; 24 T. L. R. 673—H. L. (Sc.).

**5. Crowd on Platform—Passenger Pushed on to Line.**—A married woman with an infant in her arms was standing with her husband at the Waverley Station, Edinburgh, on a Saturday evening in September, waiting for additional carriages to be added to a train which was to leave a quarter of an hour later. Before the carriages were in position an orderly crowd of passengers collected behind the woman, and as it pressed forward on the arrival of the carriages the woman was pushed off the platform on to the carriages and was injured. In an action for damages by the woman against the railway company:—

HELD—that her injuries were not due to

**Railway Management—Continued.**

negligence on the part of the railway company.

*McCALLUM v. NORTH BRITISH RY.*, [1908] S. C. [415—Ct. of Sess.]

**6. Level Crossing over Railway—Licence to use Footpath across Line—Trucks Standing on Line—Person Crossing Line under Trucks—Personal Injuries Caused by Trucks Moving.**—A railway company gave persons a licence to cross their line at a certain place where there was a footpath, but the footpath was not dedicated as a public highway. While a train of trucks belonging to a neighbouring colliery company was standing on the line blocking the footpath the plaintiff's wife attempted to cross the line higher up than the footpath by crawling under the buffers of the trucks. The train moved on, and she was killed. In an action by the plaintiff against the railway company and the colliery company in the county court to recover damages for his wife's death owing to the defendants' negligence in not having a man there to warn persons wishing to cross that the trucks were about to move, the county court judge found for the plaintiff.

HELD—that the licence to cross the line did not include a licence to cross the line when trucks were there, and that there was no evidence of negligence in the defendants.

*FRENCH v. HILLS PLYMOUTH CO.*, 24 T. L. R. [644—Div. Ct.]

**7. Train Overshooting Platform—"Invitation to Alight"—Passenger Alighting Before Warning could be Given—Evidence of Negligence.**—The plaintiff was travelling by train from B. to P. on a dark and foggy night. At P. the train overshot the platform by about 130 yards and then drew up. The engine-driver sounded his whistle and sent the fireman back to see that none of the passengers alighted, but before the fireman had time to give this warning the plaintiff alighted and in doing so was injured. Upon these facts the jury found for the plaintiff, on the ground that there had been negligence on the part of the railway company. The railway company appealed.

HELD—that there was no evidence of negligence to go to the jury.

*ANTHONY v. MIDLAND RY. CO.*, 25 T. L. R. 98 [—Div. Ct.]

**XI. TRESPASSERS.**

**8. Defective Fence—Railway Sidings and Turntable—Infant Trespasser—Invitation to Danger.**—The defendants maintained a siding and turntable on a plot of ground adjacent to a public road which crossed their line by a bridge. The plot of ground was approached from the road by a gate, which was kept locked; and the road leading to the bridge was separated from the defendants' premises by a bank and hedge. There was a gap in this hedge large enough for a child to pass through, and a track more or less defined leading to the site of the turntable. The plaintiff, a child of tender years, obtained access

to the defendants' premises, as it was alleged, through this gap, in the company of two older boys, who placed him upon the defendants' turntable and then put it in motion to give him a ride, whereupon the plaintiff's leg was severely crushed. There was evidence that on at least one former occasion an employee of the defendants had seen boys playing on the turntable, and that they on his approach ran away.

HELD—that the defective condition of the defendants' hedge was not the effective cause of the accident, and that the plaintiff being a trespasser, and there being no evidence of invitation or allurements by the defendants, judgment should be entered for them.

*COOKE v. M. G. W. RY. CO. OF IRELAND*, [1908] [2 I. R. 242—K. B. D.]

**XII. VEHICLES—OWNERS AND DRIVERS.**

**9. Damage to Standard Lamp on Footpath by Motor-Omnibus—Skidding of Omnibus.**—A standard lamp erected on the footpath in front of the plaintiff's premises was damaged by a motor-omnibus of the defendants colliding with it. The centre of the standard was 14½ inches from the edge of the kerb, and it was struck at a height of 8 feet from the ground, the standard being broken at a height of 5 feet 6 inches from the ground. The deputy county court judge nonsuited the plaintiffs upon the grounds (1) that there was no evidence of negligence on the part of the defendants, and (2) even if there was such negligence the plaintiffs were not entitled to recover, as they had not shown any right to erect the standard on the footpath.

HELD—that the defendants were not entitled to raise the second point, and that the fact that a vehicle which in ordinary circumstances confined itself to the roadway had knocked down a permanent structure on the pavement was evidence upon which the jury might come to the conclusion that there was negligence on the part of the driver of the vehicle; and that the case must go back for a new trial.

*ISAAC WALTON & CO. v. VANGUARD MOTOR [BUS CO.]*, 72 J. P. 505; 25 T. L. R. 13; 53 Sol. Jo. 82—Div. Ct.

**XIII. MISCELLANEOUS.**

**10. Injuries Caused by Alleged Servant of Railway Company—Actual Employment—Findings of Jury.**—In this action against a "tube" railway company to recover damages for personal injuries sustained by the plaintiffs, caused by the fall of T., alleged to be in the defendants' employment, from the top of a lift shaft and through the roof of the ascending lift, the following questions were left to the jury:—(1) Was T. at the time of the accident in the actual employment of the defendants and was he guilty of negligence in opening the doors of the shaft? (2) Did T. commit suicide, and, if so, had the defendants provided proper appliances for working the doors of the shaft? (3) What were the damages? The jury found that T. was in the actual employment of the defendants at

**Miscellaneous—Continued.**

the time of the accident; that there was no evidence that T. was guilty of negligence; that T. did not commit suicide; and that the defendants had not supplied reasonably safe appliances for the doors of the shaft. The jury assessed the damages at £950.

**HELD**—that the answer as to the actual employment of T., besides being against the weight of evidence, was made unnecessary by the answer that there was no evidence of negligence on the part of T.; that the negative answer as to suicide disposed of the whole of the second question; and that judgment must be entered for the defendants.

**MACAULEY v. GREAT NORTHERN, PICCADILLY**  
[AND BROMPTON RY. Co., *Times*, December 3rd and 4th, 1908—Lawrance, J.]

**11. Personal Injuries Caused by Gutter Falling from Roof—No Evidence of Negligence.**—The plaintiff was injured by a piece of the gutter from the roof of the defendant's house falling as she was passing along the street. The fall of the gutter took place owing to a screw having rotted. Evidence was given on behalf of the defendant that workmen had been periodically employed to examine and repair the gutter. There was no evidence that the defendant knew of its defective condition. The jury found that there was no want of reasonable care on the part of the defendant in maintaining the gutter, and that its fall was not occasioned by neglect or default on his part, and thereupon, by the direction of the Judge, found a verdict for the defendant.

**HELD**—that the defendant was entitled to retain the verdict.

**PALMER v. BATEMAN**, [1908] 2 I. R. 393—C. A.

**NEGOTIABLE INSTRUMENTS.**

*See* **BILLS OF EXCHANGE, ETC.**

**NEWFOUNDLAND.**

*See* **DEPENDENCIES AND COLONIES.**

**NEW SOUTH WALES.**

*See* **DEPENDENCIES AND COLONIES.**

**NEWSPAPERS.**

*See* **CRIMINAL LAW ; LIBEL ; PRESS AND PRINTING.**

**NEW ZEALAND.**

*See* **DEPENDENCIES AND COLONIES.**

**NEXT OF KIN.**

*See* **DESCENT AND DISTRIBUTION.**

**NON COMPOS PERSON.**

*See* **LUNATICS.**

**NOTARIES.**

**1. Appointment in Colony—Convenience of Public—Consideration as to Number of Notaries.**—Faculty issued for the appointment of the applicant as a notary for Melbourne. In the future any application for appointment as a notary for Melbourne will not be encouraged (unless such application is very strongly supported) if the effect of granting it would be to add to the number of notaries in Melbourne.

**FAY v. THE SOCIETY OF NOTARIES AT MELBOURNE**, 25 T. L. R. 92—Sir L. Dibdin.

**2. Striking off Roll—Evidence—Order of King's Bench Division Striking off Roll of Solicitors—Binding on Court of Faculties in Absence of New Facts.**—The Court of Faculties, in considering an application to remove a man's name from the roll of notaries public, is bound to accept an order of the King's Bench Division striking the same man off the roll of solicitors, and also, as to findings of fact, the report of the Statutory Committee of the Law Society, subject to this, that it is open to the subject of the application to prove further facts which have happened since the making of the order or which were not then before the Court, and might alter the complexion of the case.

**RE A NOTARY PUBLIC, EX PARTE THE INCORPORATED SOCIETY OF PROVINCIAL NOTARIES PUBLIC**, *Times*, December, 19th, 1908—Ct. of Faculties.

**3. Striking off Roll—Fraud—Forgery.**—Two notaries were struck off the roll, one after conviction for a criminal offence involving fraud, and one after conviction for forgery.

**IN RE PRIOR**, [1908] W. N. 193; **IN RE [TERRILL]**, [1908] W. N. 194—Ct. of Faculties.

**NOTICE OF DISHONOUR.**

*See* **BILLS OF EXCHANGE.**

**NOTICE TO QUIT.**

*See* **LANDLORD AND TENANT.**

**NOVATION.**

*See* **CONTRACT.**



## NUISANCE.

### I. WHAT AMOUNTS TO . . . . . COL. 445

#### II. REMEDIES.

##### (a) Indictment . . . . . 447

[No paragraphs in this vol. of the Digest.]

##### (b) When Action lies . . . . . 447

[No paragraphs in this vol. of the Digest.]

##### (c) Damages . . . . . 447

[No paragraphs in this vol. of the Digest.]

##### (d) Injunction . . . . . 447

[No paragraphs in this vol. of the Digest.]

And see GAS; HIGHWAYS; METROPOLIS;  
NEGLIGENCE; PUBLIC HEALTH;  
SEWERS AND DRAINS; TRAMWAYS,  
No. 6.

### I. WHAT AMOUNTS TO.

1. *Noise — Corporation — Electric Lighting Works — Church — Annoyance to Congregation — Humming and Buzzing Sound — Injunction Refused.*—The plaintiffs were the incumbent and trustees of a church situated in the non-residential part of a town. The defendants, the corporation of the town, erected in close proximity to the church an electrical generating and transforming station, the machinery of which, as the plaintiffs alleged, caused a humming or buzzing sound in the church and certain buildings used in connection therewith, such as seriously to annoy and disturb persons using the same. In an action for an injunction:

HELD—that the plaintiffs were not, because their premises were used as a place of worship, entitled to anything more than the ordinary amount of quiet in a town, that the character of the neighbourhood and the surrounding circumstances must be considered, that the law did not regard trifling inconveniences, and that everything of the sort must be looked at from a reasonable point of view.

HELD FURTHER, on the evidence—that though the sound might cause irritation and annoyance to sensitive persons it did not amount to a legal nuisance, and that no injunction ought to be granted.

HEATH AND OTHERS *v.* BRIGHTON CORPORATION, 72 J. P. 225; 98 L. T. 718; 24 T. L. R. 414—Joyce, J.

2. *Omnibus — Motor Omnibus — Damage to Lamp Post — Skidding — No Evidence of Negligence.*—In an action to recover damages for an injury done to a standard lamp erected on the pavement by a motor omnibus skidding into it on a day when the roads were greasy, the county court judge found that the omnibus in question was duly licensed, that the driver was guilty of no personal negligence, that it was a well-known fact that in certain conditions motor-omnibuses were liable to skid, and that when they did so it was impossible to control them; and he held that in these circumstances the defendants were liable for placing a nuisance on, and for negligently using the highway; he accordingly gave judgment for the plaintiff.

HELD (dismissing the appeal)—that in view of the findings of fact of the county court judge, the Court could not interfere.

GIBBONS *v.* VANGUARD MOTORBUS CO., 72 [J. P. 505; 25 T. L. R. 13; 53 Sol. Jo. 82—Div. Ct.]

3. *Sewage — Oyster Layings — Discharge of Untreated Sewage into Tidal Waters — Nuisance — Common Law or Prescriptive Right to Discharge Sewage.*—Untreated sewage was discharged by a corporation into tidal waters so as to pollute the plaintiff's oyster-beds.

HELD—that the corporation had neither a common law right nor a prescriptive right to discharge sewage into the sea so as to cause a nuisance, and that an injunction with an inquiry as to damages must be granted.

Hobart *v.* Southend-on-Sea Corporation ([1906] 75 L. J. K. B. 305; 70 J. P. 192; 54 W. R. 454; 94 L. T. 337; 22 T. L. R. 307, 530; 4 L. G. R. 757—Buckley, J.) and Foster *v.* Warblington Urban District Council ([1906] 1 K. B. 648; 75 L. J. K. B. 574; 70 J. P. 233; 54 W. R. 575; 94 L. T. 876; 22 T. L. R. 421; 4 L. G. R. 735—C. A.) followed.

HELD FURTHER—that scientific treatment would lessen the risk of contamination, and that the effluent might be discharged so as not to pass over the beds; but that if it could be neither sufficiently purified nor so discharged as to obviate damage to the beds, the corporation must discharge its sewage elsewhere.

OWEN *v.* FAVERSHAM CORPORATION, 72 J. P. [404—Eve, J.]

Affirmed, *Times*, November 24th, 1908—C. A.

4. *Sewage — Storm-water Outlets — Discharge into Tidal Navigable Creek — Infringement of Private Rights — Injunction — Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 135 — Metropolis Management Amendment Act, 1858 (21 & 22 Vict. c. 104), ss. 1, 2, 24.*—The plaintiffs were the owners of the foreshore and bed of a tidal navigable creek in the river Thames, and also of the land on each side of the creek, and used the creek for loading and unloading their barges in carrying on their business in the factories on the land.

In 1855 a stream called the Falcon Brook, which discharged into the creek, had become an open sewer and was by the Metropolis Management Acts, 1855, vested as a sewer in the Metropolitan Board of Works, the predecessors of the defendant council. About 1865 the Board, under the powers of the Metropolis Management Acts, 1855 and 1858, covered in the Falcon Brook and connected it with their main lower level sewer so that it discharged into that sewer and no longer flowed into the creek, but an outlet into the creek was made at the point of connection and was controlled by a penstock. In 1907 the defendant council, in order to relieve the pressure in the low level sewer arising from storm-water in times of heavy rainfall, constructed a pumping station at the outlet, and, when the necessity arose, pumped the storm-water into the creek and so into the Thames. The storm-

**What Amounts to—Continued.**

water was full of sewage and caused a serious nuisance to the plaintiffs, who claimed an injunction to restrain the continuance of the nuisance. The defendant council contended that the pumping station was properly constructed under their statutory powers as part of their main drainage system, that they had acted reasonably, and that an injunction would not lie.

**HELD**—that there was nothing in the said Acts which authorised the defendants to discharge storm-water into the creek, and that the plaintiffs were entitled to the injunction on the ground of a nuisance, and, *semble*, also on the ground of trespass.

Decision of Neville, J. (72 J. P. 315; 24 T. L. R. 607) affirmed.

PRICE'S PATENT CANDLE CO., LD. *v.* LONDON [COUNTY COUNCIL, [1908] 2 Ch. 526; 72 J. P. 429; 99 L. T. 571; 24 T. L. R. 822—C. A.

5. *Traction Engine—Sparks—Damage to Property—Negligence Negatived—Absolute Liability of Owner of Engine.*—A traction engine, the property of the defendant, whilst passing along a road under the charge of the defendant's servants, set fire to a rick belonging to the plaintiff by a spark from the chimney of the engine. There was no negligence in the manner of conducting the engine, but such engines are liable to cause damage of this kind in spite of careful treatment.

**HELD**—that the owner of an engine of that kind puts it on the road at his own peril, and that the plaintiff was entitled to recover.

*Powell v. Fall* ((1880), 5 Q. B. D. 597; 49 L. J. Q. B. 428; 45 J. P. 156; 43 L. T. 562) followed.

GUNTER *v.* JAMES, 72 J. P. 448; 24 T. L. R. [868; 6 L. G. R. 1138—Lawrence, J.

**II. REMEDIES.****(a) Indictment.**

[No paragraphs in this vol. of the Digest.]

**(b) When Action Lies.**

[No paragraphs in this vol. of the Digest.]

**(c) Damages.**

[No paragraphs in this vol. of the Digest.]

**(d) Injunction.**

[No paragraphs in this vol. of the Digest.]

**NULLITY OF MARRIAGE.**

*See* HUSBAND AND WIFE.

**OATHS AND AFFIRMATIONS.**

*See* CRIMINAL LAW; EVIDENCE; PRACTICE AND PROCEDURE.

**OBSCENE BOOKS.**

*See* CRIMINAL LAW AND PROCEDURE.

**OBSTRUCTING JUSTICE.**

*See* CRIMINAL LAW AND PROCEDURE.

**OFFICIAL SECRETS ACT, 1889.**

*See* CRIMINAL LAW AND PROCEDURE.

**OMNIBUSES.**

*See* NEGLIGENCE; STREET TRAFFIC.

**ONTARIO.**

*See* DEPENDENCIES AND COLONIES.

**OPEN SPACES AND RECREATION GROUNDS.**

[No paragraphs in this vol. of the Digest.]

**OVERSEERS.**

*See* POOR LAW.

**OYSTERS.**

*See* FISHERIES.

**PARENT AND CHILD.**

*See* BASTARDY; INFANTS.

**PARISH.**

*See* ECCLESIASTICAL LAW; LOCAL GOVERNMENT.

**PARISH COUNCILS.**

*See* LOCAL GOVERNMENT.

**PARKS.**

See OPEN SPACES.

**PARLIAMENT.**

See PRIVATE BILLS.

**PARTICULARS.**

See AUCTIONS; COUNTY COURTS;  
PRACTICE AND PROCEDURE; SALE  
OF LAND.

**PARTITION.**

1. *Conversion—Real Estate—Partition Action—Order for Sale—Order Not Carried Out.*—An order for sale of realty in a partition action operates as a conversion of the share of a person *sui juris* before a sale actually takes place.

RE DODSON, YATES *v.* MORTON, [1908] 2 Ch. 638; 77 L. J. Ch. 830; 98 L. T. 395—Eve, J.

**PARTNERSHIP.****I. CONSTITUTION OF PARTNERSHIP . . . 449**

[No paragraphs in this vol. of the Digest.]

**II. RIGHTS AND LIABILITIES OF PARTNERS.****(a) Accounts . . . 449**

[No paragraphs in this vol. of the Digest.]

**(b) Authority . . . 450**

[No paragraphs in this vol. of the Digest.]

**(c) Expulsion . . . 450****(d) Retiring Partner . . . 450**

[No paragraphs in this vol. of the Digest.]

**(e) Surviving Partner . . . 450**

[No paragraphs in this vol. of the Digest.]

**(f) In General . . . 450**

[No paragraphs in this vol. of the Digest.]

**III. CONTRACTS WITH PARTNERS . . . 450**

[No paragraphs in this vol. of the Digest.]

**IV. DISSOLUTION . . . 450****V. GOODWILL . . . 450**

[No paragraphs in this vol. of the Digest.]

And see BANKRUPTCY, No. 22; BILLS OF EXCHANGE, No. 1; CONFLICT OF LAWS, Nos. 2, 6; CONTRACTS; DISCOVERY, No. 1; GAMING, No. 10; PRACTICE AND PROCEDURE; RECEIVERS; WILLS.

**I. CONSTITUTION OF PARTNERSHIP.**

[No paragraphs in this vol. of the Digest.]

**II. RIGHTS AND LIABILITIES OF PARTNERS.****(a) Accounts.**

[No paragraphs in this vol. of the Digest.]

Y.D.

**(b) Authority.**

[No paragraphs in this vol. of the Digest.]

**(c) Expulsion.**

1. *Dentist's Partnership*—"Professional Misconduct"—*Dentist—Improper Advertisements—Name Erased from Dentists' Register.*

HELD, on the facts—that certain advertisements published by a dentist as director of a dental institute amounted to "professional misconduct" within the meaning of a partnership deed; and that, therefore, it was unnecessary to consider how far the fact that the Medical Council had erased his name from the Register in consequence of such advertisements was evidence of professional misconduct.

Decision of C. A. ([1907] 2 Ch. 236; 76 L. J. Ch. 627; 97 L. T. 266; 23 T. L. R. 601) affirmed on different grounds.

HILL *v.* CLIFFORD, CLIFFORD *v.* TIMMS, CLIFFORD *v.* PHILLIPS, [1908] A. C. 12; 77 L. J. Ch. 91; 98 L. T. 64—H. L.

**(d) Retiring Partner.**

[No paragraphs in this vol. of the Digest.]

**(e) Surviving Partner.**

[No paragraphs in this vol. of the Digest.]

**(f) In General.**

[No paragraphs in this vol. of the Digest.]

**III. CONTRACTS WITH PARTNERS.**

[No paragraphs in this vol. of the Digest.]

**IV. DISSOLUTION.**

2. *Partnership at Will—Death of Partner—Bequest of Income of his Share to his Widow for Life, Remainder to his Partner—Intention to Bequeath Share to Partner Subject to Widow's Life Interest, or to Bequeath Share in Partnership to the Widow—Right of Either Party to Dissolve Partnership Without Consent of the Other—Undrawn Profits of Testator—Liability of Firm to the Executors.*—A testator bequeathed the income of his share in a partnership at will to his wife for her life, and after her death he gave his share to his partner.

HELD—firstly, that the partnership determined by the testator's death, and even if the bequest could operate as a specific gift, the result was a partnership at will between the partner and the widow which could be determined by either, without the consent of the other.

The testator at the time of his death was entitled to a sum in respect of undrawn profits in the partnership.

HELD—that this sum became payable to the executors of the testator.

CRAVEN *v.* CRAVEN, 52 Sol. Jo. 498—Joyce, J.

**V. GOODWILL.**

[No paragraphs in this vol. of the Digest.]



**PARTY WALLS.**

*See* BOUNDARIES; EASEMENTS, No. 10;  
METROPOLIS.

**PATENTS AND INVENTIONS.**

	COL.
I. SPECIFICATION	
1. Amendment and Disclaimer . . . . .	452
[No paragraphs in this vol. of the Digest.]	
2. Construction . . . . .	452
[No paragraphs in this vol. of the Digest.]	
3. Disconformity . . . . .	452
[No paragraphs in this vol. of the Digest.]	
II. GRANT: APPLICATION AND OPPOSITION	452
[No paragraphs in this vol. of the Digest.]	
III. SUBJECT-MATTER.	
1. Invention . . . . .	452
[No paragraphs in this vol. of the Digest.]	
2. Combination . . . . .	452
[No paragraphs in this vol. of the Digest.]	
IV. ANTICIPATION: PRIOR USE OR PRIOR PUBLICATION	452
[No paragraphs in this vol. of the Digest.]	
V. FIRST AND TRUE INVENTOR . . . . .	452
VI. UTILITY . . . . .	452
[No paragraphs in this vol. of the Digest.]	
VII. ASSIGNMENT OR SALE, AND CONSTRUCTION OF AGREEMENTS THEREFOR	452
VIII. LICENCE . . . . .	454
[No paragraphs in this vol. of the Digest.]	
IX. PROLONGATION . . . . .	454
X. MEASURE OF DAMAGES . . . . .	455
XI. ACTION TO RESTRAIN THREATS . . . . .	455
XII. PRACTICE.	
1. Costs . . . . .	456
[No paragraphs in this vol. of the Digest.]	
2. In General . . . . .	456
[No paragraphs in this vol. of the Digest.]	
3. Interlocutory Injunctions . . . . .	456
[No paragraphs in this vol. of the Digest.]	
4. On Petition for Revocation . . . . .	456
XIII. COMMITTAL . . . . .	456
[No paragraphs in this vol. of the Digest.]	
XIV. PATENT AGENTS. . . . .	456
XV. MISCELLANEOUS CASES OF INFRINGEMENT	
1. Colourable Imitations, etc. . . . .	457
[No paragraphs in this vol. of the Digest.]	
2. Exposure Without Intention of Sale . . . . .	457
[No paragraphs in this vol. of the Digest.]	
3. Importation and Infringement by Foreigner . . . . .	457
[No paragraphs in this vol. of the Digest.]	

**XV. MISCELLANEOUS CASES OF INFRINGEMENT—Continued.**

	COL.
4 Repairs Constituting New Article . . . . .	457
[No paragraphs in this vol. of the Digest.]	
5. Other Cases . . . . .	457
And see DEPENDENCIES AND COLONIES; MASTER AND SERVANT; PRACTICE AND PROCEDURE; TRADE MARKS.	

**I. SPECIFICATION.****(1) Amendment and Disclaimer.**

[No paragraphs in this vol. of the Digest.]

**(2) Construction.**

[No paragraphs in this vol. of the Digest.]

**(3) Disconformity.**

[No paragraphs in this vol. of the Digest.]

**II. GRANT: APPLICATION AND OPPOSITION.**

[No paragraphs in this vol. of the Digest.]

**III. SUBJECT-MATTER.****(1) Invention.**

[No paragraphs in this vol. of the Digest.]

**(2) Combination.**

[No paragraphs in this vol. of the Digest.]

**IV. ANTICIPATION: PRIOR USE OR PRIOR PUBLICATION.**

[No paragraphs in this vol. of the Digest.]

**V. FIRST AND TRUE INVENTOR.**

**1. Petition for Revocation—Sale of Invention to Company—Company taking out Patent and not Paying Price for Invention—No Ground for Revocation.**—One ground put forward for the revocation of a patent was that the petitioner was the true and first inventor, and therefore alone entitled to the patent which had been granted to the agent of a company. The answer was that he had sold the invention to the company.

**HELD**—that the petitioner had his proper remedy if he thought that the company had not paid him all that was due, and that a petition for revocation of a patent cannot be used for the purpose of enforcing contractual rights.

**IN RE MARK'S PATENT, Times, June 3rd, 1903—**  
[Eve, J.]

**VI. UTILITY.**

[No paragraphs in this vol. of the Digest.]

**VII. ASSIGNMENT OR SALE, AND CONSTRUCTION OF AGREEMENTS THEREFOR.**

**2. Agreement to Assign—Infringement—Limited Licence—Conditions of Re-sale.**—In 1901 the plaintiff G. had invented a safety razor for which he had applied for, but had not obtained, a patent in the United States, and had made no application in England. In that year he agreed to assign to the plaintiff company the American application, and any new or substituted application, together with all rights to apply for letters patent in other countries, including Great Britain. In 1902 G. obtained letters patent in England in his own name, but was not then called upon to execute any assignment to the company. Since the date of the patent and before August 31st,

### Assignment or Sale, and Construction of Agreements therefor—Continued.

1906, the company had been selling the patented razors by arrangement with G. On August 31st, 1906, the defendants bought one from a wholesale dealer, to whom the company had sold it, with a label attached purporting to grant a limited licence for resale at a price not less than one guinea. On September 5th, 1906, G. assigned his patent to the company. On September 21st, 1906, the defendants sold, for less than one guinea, the patented razor which they had bought.

**HELD**—that the effect of the agreement of 1901 was not to make the plaintiff company equitable owners of any patent which the plaintiff G. might obtain in England; that G. was not a trustee for the company of the letters patent obtained in 1906; that G., the patentee, merely authorised the company to sell the patented article on such terms as the company pleased; that therefore the conditions imposed by the company could not be more than a contract with the purchaser from the company and did not affect the defendants, and that the defendants were not infringers of the patent.

GILLETTE SAFETY RAZOR CO. v. A. W. GAMAGE, [Ld., *Times*, March 11th, 1908—Warrington, J.]

3. *Sale—Royalties Reserved—Sub-sale—Original Purchaser Repudiating Contract—Vendor's Lien for Unpaid Royalties—Damages—Election—Bankruptcy of Purchaser.*—The plaintiffs, who were the owners of letters patent, agreed to sell them to S. for the sum of £5,000 and the payment of certain royalties on all goods manufactured under the patent and sold by him, with a minimum yearly sum for royalties. By the agreement the royalties were payable half-yearly, and if any of the minimum sums were unpaid for three months the plaintiffs were to become entitled to the whole of the amounts which would become payable in respect of all the minimum yearly royalties during the term of the patent; and the purchaser was to use his best endeavours to maintain the patent in full force. S. assigned the patent to a company who had full knowledge of his agreement. After the first payment of royalties, which the company duly paid, S. repudiated the agreement. The plaintiffs then brought an action against him and the company, claiming as against the purchaser the total amount of the unpaid minimum royalties, and as against the company a lien on the patent for the amount of those royalties.

**HELD**—(1) that the plaintiffs had not (as the company contended) irrevocably elected to rescind the agreement, but that they could not sue both for damages and for the consideration;

(2) That they were entitled as against S. to have an account taken of unpaid royalties and to prove for the amount in his bankruptcy; and

(3) That on the authority of *Werderman v. Société Générale d'Electricité* ([1881] 19 Ch. D. 246; 45 L. T. 574; 30 W. R. 33—C. A.) as explained in *Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co.* ([1902] 1 Ch. 146; 71 L. J. Ch. 158; 85 L. T. 652; 50 W. R. 177; 18 T. L. R. 161—C. A.) they were entitled as against

the company to a declaration that they had a lien on the patent for the unpaid minimum yearly royalties as being part of the unpaid consideration money for the purchase.

DANSK REKYLRIFTEL SYNDIKAT AKTIESELSKAB v. SNELL AND THE REXER ARMS CO., LD., [1908] 2 Ch. 127; 77 L. J. Ch. 352; 98 L. T. 830; 24 T. L. R. 395; 25 R. P. C. 421—Neville, J.]

### VIII. LICENCE.

[No paragraphs in this vol. of the Digest.]

### IX. PROLONGATION.

4. *Particulars of Objections—What to be Given—R. S. C. (Patents and Designs), 1908, Ord. 53 A, rr. 3, 17.*—Rule 3 of Ord. 53 A (1908), together with the other Rules of the Supreme Court, which are made applicable, form a code governing all questions of practice upon petitions for the extension of patents.

The rule gives the Court considerable latitude as to what particulars of objections to a prolongation should be given; but the objector should as soon as possible give particulars of what he relies on as preventing the patent from being valid or from having subject-matter, including a concise statement of what he knows as to any literature, specifications, and similar documents relied on.

IN RE JOHNSON'S PATENT, [1908] 2 Ch. 487; [77 L. J. Ch. 732; 99 L. T. 442; 25 R. P. C. 452—Parker, J.]

5. *Principles on which Court Acts—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 18.*—By sect. 18 of the Patents and Designs Act, 1907, the Court, in considering whether or not the term of a patent should be extended, "shall have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case." The Court must, therefore, consider the nature and importance of the disclosure made in the specification to the public, and for that purpose questions of novelty and subject-matter are necessarily material; and it is the duty of the petitioner for an extension of term to bring to the notice of the Court all that may in any way affect the judgment of the Court in those matters. But if, after hearing the evidence of the petitioner's witnesses, there is in the opinion of the Court a *prima facie* case for upholding the validity of the patent in respect of novelty and subject-matter, the Court need not, as a general rule, investigate the matter further, it being always open to an objector to challenge the validity of the patent in proceedings more appropriate for that purpose.

For the purpose of considering whether a patentee has been adequately remunerated, profits on his corresponding foreign patents as well as on his English patents must be taken into account, and some allowance ought also to be made for profits which will, in all probability, be received in respect of both before their expiration. It is incumbent on a patentee, who petitions for an extension of his patent, to prove that he has done all that a patentee could do to launch his invention on the British market. He

**Prolongation—Continued.**

ought also to state all facts which are within his knowledge, and which it is obviously material that the Court should know.

When the Comptroller opposes the extension of a patent on the ground that the traders of this country will, if the patent is prolonged, be put at a disadvantage compared with the traders of some other country, proper statistics or other information ought to be supplied to the Court as to the nature and extent of the competition which is feared.

IN RE JOHNSON'S PATENT, 77 L. J. Ch. 737; [24 T. L. R. 889—Parker, J.

**X. MEASURE OF DAMAGES.**

**6. Infringement—Judgment for Patentee—Subsequent Discovery of Instances for Prior User—Petition by Infringer for Revocation of the Patent—Judgment for Revocation—Right of Patentee to Damages for Infringement.**—In an action for infringement of a patent the plaintiff obtained judgment for an injunction and for damages. Subsequently the defendants discovered instances of prior user of which they had been ignorant at the trial, and they petitioned for revocation of the patent, and on that petition they obtained revocation of the patent.

HELD—that, notwithstanding the revocation of the patent, the defendants were estopped from denying the validity of the patent at the date of the trial of the action for infringement, and that, therefore, the plaintiff was entitled to damages for the infringement.

Decision of Parker, J. (77 L. J. Ch. 586; 24 T. L. R. 717; 25 R. P. C. 529) affirmed.

POULTON v. ADJUSTABLE COVER AND BOILER [BLOCK CO., [1908] 2 Ch. 430; 77 L. J. Ch. 780; 24 T. L. R. 782; 52 Sol. Jo. 639; 25 R. P. C. 661—C. A.

**XI. ACTION TO RESTRAIN THREATS.**

**7. Threats—Commencing Action—Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), s. 32.**—The defendant, who was the owner of a patent, wrote a letter to a firm who had bought certain articles from the plaintiff, in which she said:—"The article being sold and advertised by you is regarded as an infringement. We therefore request you to cease advertising and selling the article in question." The plaintiff brought an action for an injunction to restrain the continuance of the threats, and the defendant then brought an action for infringement, which action was discontinued.

HELD—that as the letter constituted a threat of legal proceedings within the meaning of sect. 32 of the Patents, etc., Act, 1883, the plaintiff was entitled to bring an action for an injunction to restrain the continuance of the threats, unless the defendant with due diligence commenced and prosecuted an action for infringement; but that, as the defendant had *bona fide* commenced an action for infringement, in which the validity of the patent could have been tried, the proviso

in sect. 32 of the Act applied, and the plaintiff's action for an injunction was not maintainable.

Decision of Kekewich, J. (97 L. T. 683; 24 T. L. R. 9; 25 R. P. C. 1) reversed.

CRAIG v. DOWDING, 98 L. T. 231; 24 T. L. R. [248; [1908] W. N. 22; 25 R. P. C. 259—C. A.

**XII. PRACTICE.****(1) Costs.**

[No paragraphs in this vol. of the Digest.]

**(2) In General.**

[No paragraphs in this vol. of the Digest.]

**(3) Interlocutory Injunctions.**

[No paragraphs in this vol. of the Digest.]

**(4) On Petition for Revocation.**

**8. Amendment of Specification—Disclaimer—Terms of Leave to Amend—Costs of Comptroller—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 22.**—Upon a petition for the revocation of a patent the patentee applied for leave to amend his specification by way of disclaimer of part thereof under sect. 22 of the Patents and Designs Act, 1907.

HELD—(1) that such an application need not be made to the Patent Judge, as it did not fall within sect. 92, sub-sect. 2, of the Act; (2) that, where amendments are allowed, the Court will as a general rule impose the terms that no injunction should be asked for in any action brought for infringement of the patent in respect of any articles made before the date of the order, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

In re Geipel's Patent ([1903] 2 Ch. 715; 89 L. T. 127; 52 W. R. 63—Buckley, J.) followed.

In such a case notice must be given to the Comptroller, and the amendments advertised before they are considered by the Court, and the Comptroller will be entitled to his costs of appearing on the application.

IN RE KLABER AND STEINBERG'S LETTERS [PATENT, [1908] 1 Ch. 847; 77 L. J. Ch. 569; 99 L. T. 87; 24 T. L. R. 352, 482; 25 R. P. C. 334—Neville, J.

**XIII. COMMITTAL.**

[No paragraphs in this vol. of the Digest.]

**XIV. PATENT AGENTS.**

**8a. Lapse of Patent—Application for Renewal Fees by Patent Agents—Person Applied to No Longer Interested—Patent Allowed to Lapse—No Malice—Action for Damages.**—H. obtained letters patent for an invention. Before the filing of the complete specification negotiations took place for a partnership in the patent between C., B., and H. The patent agents sent their account for work done, including the filing of the complete specification, to C., B., and H., which account was paid by C. No partnership was, however, entered into, and it was agreed that the patent should be left for H. to deal with as he wished. Subsequently the patent agents advised C. that the renewal fee was becoming due, and received no answer. They wrote again



**Patent Agents—Continued.**

to C., and to this letter C.'s son answered by a post-card to the effect that his father was abroad and that the agents had better let the patent lapse. Accordingly the patent lapsed. Later, H. entered into negotiations with a firm in regard to the patent, being unaware of its lapse. These negotiations fell through, as H., having discovered the lapse and applied for a restoration of the letters patent, could only obtain an order for restoration with saving clauses in favour of persons who had in the meanwhile set up machinery to work the invention. H. now sued C.'s son to recover damages suffered by reason of the post-card. No malice was alleged, and it was admitted that, if no reply had been sent to the patent agents' advice as to the renewal fees, the patent would have lapsed just the same.

**HELD**—that the action could not be maintained; that after the termination of the negotiations for a partnership the obligation to protect the patent rested with H. alone, and there was no duty on C.'s part to pay the renewal fees; that the patent agents were under no legal obligation to write as to the renewal fees; and, further, that the temporary lapse of the patent was caused solely by H.'s own neglect.

**HUGHES v. CHAMBERLAIN**, *Times*, December [15th, 1908—Lord Alverstone, C. J.]

**XV. MISCELLANEOUS CASES OF INFRINGEMENT.****(1) Colourable Imitations, etc.**

[No paragraphs in this vol. of the Digest.]

**(2) Exposure Without Intention of Sale.**

[No paragraphs in this vol. of the Digest.]

**(3) Importation and Infringement by Foreigner.**

[No paragraphs in this vol. of the Digest.]

**(4) Repairs Constituting new Article.**

[No paragraphs in this vol. of the Digest.]

**(5) Other Cases.**

**9. Infringement — Purchaser of Infringing Mechanism—Never actually Used—Intention to Use.**—The purchase of infringing mechanism for trade purposes, coupled with an intention to use it for such purposes should occasion arise, is a sufficient user to constitute an infringement even though from some cause the mechanism is never actually so used.

**BRITISH UNITED SHOE MACHINERY CO., LD.,**  
[*v. SIMON COLLIER, LD.*, 25 T. L. R. 74—  
Parker, J.]

**PAUPERS.**

*See* LUNATICS; POOR LAW; PRACTICE AND PROCEDURE.

**PAWNBROKERS AND PLEDGES.**

**1. Pawnbrokers and Pledges—Loss of Pledge—Neglect to Deliver—"Reasonable Excuse"—Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 31.**—The respondent pledged a sewing machine with the appellants, who, while acting honestly in the matter, lost the respondent's sewing machine, and being no longer in possession of it neglected to give it up to the respondent on her tendering the principal sum and profit within one year of the date of the pledge.

**HELD**—that the appellants were not without "reasonable excuse" for their failure to deliver up the pledge, and that, therefore, they had committed no offence against sect. 31 of the Pawnbrokers Act, 1872.

**ALLWORTHY AND WALKER v. CLAYTON**, [1907]  
[2 K. B. 685; 76 L. J. K. B. 934; 71 J. P. 20;  
96 L. T. 31; 21 Cox, C. C. 352—Div. Ct.]

**PAYMENT INTO COURT.**

*See* PRACTICE.

**PAYMENTS, APPROPRIATION OF.**

*See* BANKERS AND BANKING; CONTRACTS; MONEY; MORTGAGES.

**PEDIGREE.**

*See* DIGNITIES; EVIDENCE; SALE OF LAND.

**PEDLARS.**

*See* MARKETS AND FAIRS.

**PENALTY.**

*See* CRIMINAL LAW AND PROCEDURE, DAMAGES.

**PENSION.**

*See* BANKRUPTCY AND INSOLVENCY; PRACTICE AND PROCEDURE, Nos. 22, 25.

**PERJURY.**

*See* CRIMINAL LAW AND PROCEDURE.

# PERPETUATING TESTIMONY.

See EVIDENCE.

## PERPETUITIES.

	COL.
I. ACCUMULATIONS . . . . .	459
[No paragraphs in this vol. of the Digest.]	
II. PERPETUITIES . . . . .	459
<i>And see</i> CHARITIES; LANDLORD AND TENANT; TRUSTS, No. 1; WILLS, No. 57.	

I. ACCUMULATIONS.	
[No paragraphs in this vol. of the Digest.]	
II. PERPETUITIES.	

1. *Remoteness — Rules Against Perpetuities and Double Possibilities—Object of Power Concurring in Appointment to a Person Not an Object—Trust for Any Child of the Donee Attaining Twenty-three Years of Age—Power to Appoint to the Issue of the Settlor and Any Wife of his Subject to a Life Interest in the Settlor and Such Wife—Appointment by the Settlor's Will to his Daughter—Resulting Trust.*—The donees of a power of appointment appointed to their son, an object of the power, for life, and then to any wife of such son, the wife not being an object of the power, for her life. The son was a party to the deed of appointment.

**HELD**—that the appointment to the wife was good, as the deed operated as a settlement by the son of the appointed fund.

A settlement upon any children attaining twenty-three years of age of the settlor by any wife held void as infringing the rules against perpetuities and double possibilities.

A power of appointment to the issue of the settlor by any wife, subject to the life interests of the settlor and his wife, such issue to be born in his lifetime, is not validly exercised by an appointment by the settlor's will to the settlor's daughter.

WHITTING *v.* WHITTING, 53 Sol. Jo. 100—  
[Neville, J.]

2. *Remoteness — Trust for any Child of Settlor (and Donee of Power of Appointment) Attaining Twenty-three Years of Age.*—A settlement upon any children attaining twenty-three years of age of the settlor (and donee of power of appointment) by any wife held to be void as infringing the rules against perpetuities and double possibilities.

WHITTING *v.* WHITTING, 53 Sol. Jo. 100—  
[Neville, J.]

## PERSONAL PROPERTY.

[No paragraphs in this vol. of the Digest.]

## PETITION OF RIGHT.

See CONTRACT, No. 2a.

## PETROLEUM.

See EXPLOSIVES.

## PHYSICIANS.

See MEDICINE AND PHARMACY; TRADE.

## PIERS.

See SHIPPING AND NAVIGATION; WATERS AND WATERCOURSES.

## PILOTS.

See SHIPPING AND NAVIGATION.

## PISTOLS.

1. *Air Gun—Sale by Retail — Pistols Act, 1903 (3 Edw. 7, c. 18), ss. 2, 3.*—The term "pistol" in sect. 2 of the Pistols Act, 1903, does not apply to a pistol which is a mere toy, but only to a pistol which is a weapon from which a shot, bullet, or other missile can be discharged.

BRYSON *v.* GAMAGE, LD., [1907] 2 K. B. 630;  
[76 L. J. K. B. 936; 71 J. P. 439; 97 L. T. 399; 21 Cox, C. C. 515—Div. Ct.]

## PLANS.

See BUILDERS, ETC.; METROPOLIS; PUBLIC HEALTH.

## PLAY.

See COPYRIGHT, ETC.; THEATRES, ETC.

## PLEADING.

I. MISCELLANEOUS . . . . .	COL. 460
II. STRIKING OUT PLEADINGS . . . . .	461
III. RAISING POINTS OF LAW . . . . .	461
[No paragraphs in this vol. of the Digest.]	
IV. DEFAULT OF DEFENCE . . . . .	461
V. PARTICULARS . . . . .	461
[No paragraphs in this vol. of the Digest.]	
<i>And see</i> PRACTICE AND PROCEDURE.	

### I. MISCELLANEOUS.

1. *Amendment of Pleadings—Amendment at Trial.*—Where at the trial of an action the plaintiff is permitted to set up and succeed on a cause of action not appearing on the pleadings, the Judge ought to formally amend the pleadings.

HYAMS *v.* STUART KING, [1908] 2 K. B. 696—  
[C. A.]

II. STRIKING OUT PLEADINGS.

2. *Libel—Statement of Claim—Breach of Rules of Pleading—Embarrassing—Application by Defendants to Strike Out—Discretion of Court—Jurisdiction.*—A statement of claim in a libel action alleged that the libel had been published to certain persons named and to others whose names were unknown to the plaintiffs, but known to the defendants, and that the plaintiffs would rely upon the publication thereof to every person to whom they might discover that it was published. The defendants moved that the statement of claim should be struck out so far as it referred to the publication of the libel to persons unknown to the plaintiffs on the ground that it was embarrassing because they knew not how to plead to it; and, further, that it gave the plaintiffs an opportunity of administering “fishing interrogatories” with the object of ascertaining whether in fact they had been so libelled.

The Court of Appeal, reversing a decision of Coleridge, J., ordered that the statement of claim should stand.

HELD—that there was jurisdiction, and that it was a matter of discretion whether interrogatories could be administered when a statement of claim was so drawn.

RUSSELL *v.* STUBBS, LD., 52 Sol. Jo. 580—  
[H. L.]

III. RAISING POINTS OF LAW.

[No paragraphs in this vol. of the Digest.]

IV. DEFAULT OF DEFENCE.

3. *Motion for Judgment in Default of Defence—Consent by Letter to Judgment in Chambers—Costs of Motion for Judgment.*—The plaintiff claimed a declaration that the defendant was not entitled to a certain right of way, and also an injunction.

The defendant, after delivering a defence pleading a “highway,” withdrew his defence and wrote a letter consenting to a judgment in chambers.

HELD—that under the circumstances the plaintiff was entitled to the costs of a motion for judgment.

COOPER-DEAN *v.* BADHAM, [1908] W. N. 100—  
[Eve, J.]

V. PARTICULARS.

[No paragraphs in this vol. of the Digest.]

PLEDGE.

See PAWNBROKERS AND PLEDGES.

POACHING.

See GAME.

POISONS, SALE OF.

See MEDICINE AND PHARMACY.

POLICE.

See CRIMINAL LAW; DETINUE; LOCAL GOVERNMENT; MAGISTRATES; METROPOLIS; TROVER.

POLLUTION OF RIVERS.

See NUISANCES; WATERS AND WATER-COURSES.

POOR LAW.

I. IN GENERAL . . . . .	COL. 462
-------------------------	----------

II. MAINTENANCE.	
(a) Recovery of Relief . . . . .	463
[No paragraphs in this vol. of the Digest.]	

(i.) <i>From Pauper</i> . . . . .	463
[No paragraphs in this vol. of the Digest.]	

(ii.) <i>From Persons Liable</i> . . . . .	463
[No paragraphs in this vol. of the Digest.]	

(iii.) <i>In General</i> . . . . .	463
[No paragraphs in this vol. of the Digest.]	

(b) Pauper Lunatics . . . . .	463
(i.) <i>Recovery of Relief</i> . . . . .	463
(ii.) <i>Weekly Sum</i> . . . . .	464
[No paragraphs in this vol. of the Digest.]	

(c) Bastards . . . . .	464
------------------------	-----

III. OVERSEERS . . . . .	464
--------------------------	-----

IV. SETTLEMENT AND REMOVAL.	
(a) Derivative Settlement . . . . .	465
[No paragraphs in this vol. of the Digest.]	

(b) Divided Parishes . . . . .	465
(c) Husband and Wife . . . . .	465
[No paragraphs in this vol. of the Digest.]	

(d) Settlement by Residence . . . . .	465
(e) In General . . . . .	465

V. VAGRANCY AND OTHER OFFENCES . . . . .	466
[No paragraphs in this vol. of the Digest.]	

See also LUNATICS, No. 7.

I. IN GENERAL.

1. *Dissolution of Poor Law Union—Local Act—Uniting of Parishes—Consent of Guardians—Order of Local Government Board—Validity—Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 64—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), s. 11.*—A local Act of 1773 formed a union of six parishes in the town of Southampton, creating for ever a corporation of guardians (which the Local Government Board had no power to dissolve), with exceptional powers of rating within the union. One of the parishes contained over 20,000 inhabitants.

The Local Government Board made an order (1) that this union of six parishes should be dissolved; (2) that two parishes of another union should be separated therefrom; and (3) that all the above eight parishes should form a union to be termed the Southampton Union.



**In General—Continued.**

The Divided Parishes and Poor Law Amendment Act, 1876, sect. 11, empowers the Local Government Board to dissolve "any union whether formed under the Poor Law Amendment Act, 1834, or otherwise."

The Poor Law Amendment Act, 1844, sect. 64, provides that it shall not be lawful for the Poor Law Commissioners (now the Local Government Board) to unite to another parish for poor law purposes a parish of more than 20,000 persons, where the relief of the poor has hitherto been administered in that parish by guardians appointed under a local Act and not by overseers, unless they obtain the consent in writing of two-thirds at least of such guardians.

The Court of Appeal held (1), affirming the Divisional Court, that the Local Government Board had power, under sect. 11 of the Act of 1876, to dissolve the local Act union; (2) reversing the Divisional Court, that sect. 64 of the Act of 1844 was not confined to a parish having its own board of guardians, but applied to a parish forming part of a union, and that the Local Government Board had no power to unite the parish containing more than 20,000 persons to the other parishes without the consent of the guardians as prescribed by the section, and that consequently the order was bad.

*R. v. LOCAL GOVERNMENT BOARD, EX PARTE [SOUTH STONEHAM UNION, [1908] 1 K. B. 368; 77 L. J. K. B. 820; 72 J. P. 219; 99 L. T. 69; 24 T. L. R. 463, 502 Div. Ct. and C. A.*

The House of Lords reversed the decision of the C.A. on the second point, holding the order to be good (25 T. L. R. 100; [1908] W. N. 241—H. L.).

**2. Pauper Child—Registration of Religion—Mandamus to Alter Register.**—Where a pauper child, an orphan, the son of a Roman Catholic father, was registered as a Protestant in the creed register of an Irish workhouse, because the mother died a Protestant after the father's death, the Court granted a mandamus, ordering the guardians to alter the register.

The rule that *religio sequitur patrem* is not affected by an administrative provision that the religion of a child's surviving parent is to be entered in the register.

*R. v. BELFAST GUARDIANS, [1908] 2 K. B. [343—K. B. D.*

**II. MAINTENANCE.****(a) Recovery of Relief.**

[No paragraphs in this vol. of the Digest.]

**(i.) From Pauper**

[No paragraphs in this vol. of the Digest.]

**(ii.) From Persons Liable.**

[No paragraphs in this vol. of the Digest.]

**(iii.) In General.**

[No paragraphs in this vol. of the Digest.]

**(b) Pauper Lunatics.****(i.) Recovery of Relief.**

**3. Policy of Assurance in Friendly Society—Nominee of Lunatic—Friendly Societies Act,**

1896 (59 & 60 Vict. c. 25), s. 56—*Divided Parishes and Poor Law Amendment Act, 1876* (39 & 40 Vict. c. 61), s. 23.]—In June, 1902, the R. Friendly Society issued to one N., a member of the society, a policy of assurance on his own life for the sum of £100. In October, 1903, N., in pursuance of the power given by sect. 56 of the Friendly Societies Act, 1896, nominated B. to receive the money payable by the society on his death. In December, 1907, N. died, all premiums on the policy having been paid by B. In May, 1906, N. had become chargeable to the guardians of the C. union as a pauper lunatic, and the expenses incurred by the guardians in his relief up to the time of his death amounted to £51. In accordance with their rules the society had paid N.'s funeral expenses out of the policy moneys. Upon the guardians of the C. union claiming, under sect. 23 of the Divided Parishes and Poor Law Amendment Act, 1876, that, after the payment to B. of the amount of the premiums, there should be repaid to the guardians out of the policy moneys the said sum of £51:—

**HELD**—that the claim of the guardians could not be sustained, and that B. was entitled to the whole of the residue of the policy moneys in the hands of the society, subject to any claim for costs which the society might have.

*CARDIFF UNION v. BANKS AND ANOTHER, 72 [J. P. 319—County Ct.*

**(ii.) Weekly Sum.**

[No paragraphs in this vol. of the Digest.]

**(c) Bastards.****III. OVERSEERS.**

**4. Overseer—Appointment—Appeal Against—Appointment by Urban Council—Person Appointed Entitled to Exemption—Appointment Quashed on Appeal to Sessions—Poor Relief Act, 1601** (43 Eliz. c. 2), ss. 1, 6—*Local Government Act, 1894* (56 & 57 Vict. c. 73), ss. 5, 33, 52 (5).]—The right of appeal against the appointment of an overseer of the poor given by the Poor Relief Act, 1601, is not taken away by the fact that an order of the Local Government Board has transferred the duty of appointing overseers for a particular parish from the justices to the urban district council.

If a person who is exempt from liability to serve as overseer (*e.g.*, a practising solicitor) be appointed, and desires to claim such exemption, his remedy is by appeal to Quarter Sessions.

*BOWDEN v. NEW MILLS URBAN DISTRICT [COUNCIL, 72 J. P. 472—Qr. Sess.*

**5. Overseers—Precept to Overseers—Borough Council Acting as Overseers—Refusal to Pay—Dispute—Mandamus—Poor Rate Act, 1839** (2 & 3 Vict. c. 84), s. 1—*London Government Act, 1899* (62 & 63 Vict. c. 14), s. 11 (1).]—A metropolitan borough council, to whom, as overseers, a precept for poor rates had been issued by the guardians, refused to pay a part of the sum demanded on the ground that the expenditure challenged ought not to be charged on the rates of one year only. The guardians moved for a mandamus.

**Overseers—Continued.**

**HELD**—that, although the overseers were a council, the old remedy for non-payment of sums demanded by precept under sect. 1 of the Poor Rate Act, 1839, was available and appropriate, and that therefore no mandamus ought to issue.

*R. v. BERMONDSEY BOROUGH COUNCIL, EX PARTE BERMONDSEY GUARDIANS*, 72 J. P. 330; 99 L. T. 14; 6 L. G. R. 852—Div. Ct.

**IV. SETTLEMENT AND REMOVAL.****(a) Derivative Settlement.**

[No paragraphs in this vol. of the Digest.]

**(b) Divided Parishes.**

**6. Settlement — Parish Divided — Whether Settlement Destroyed—Divided Parishes and Poor Law Amendment Act, 1876** (39 & 40 Vict. c. 61), ss. 1, 6—**Local Government Act, 1894** (56 & 57 Vict. c. 73), ss. 1 (3), 36 (2).]—Where a parish is divided under the Local Government Act, 1894, into two parishes, a settlement acquired by a pauper in the original parish is not destroyed, but such pauper continues to be settled in that part of the area of the original parish in which his settlement was acquired.

*R. v. Tipton* ((1842), 6 J. P. 568; 3 Q. B. 215), and the cases following that decision, overruled.

*WEST HAM UNION v. EDMONTON UNION*, [1908] A. C. 1; 77 L. J. K. B. 85; 72 J. P. 9; 98 L. T. 1; 24 T. L. R. 108; 6 L. G. R. 39—H. L.

**(c) Husband and Wife.**

[No paragraphs in this vol. of the Digest.]

**(d) Settlement by Residence.**

**7. Seaman—Lodgings Taken by Wife—Divided Parishes and Poor Law Amendment Act, 1876** (39 & 40 Vict. c. 61), s. 34.]—J. V. was a seaman who was accustomed to pass the intervals between his voyages with his wife. In the year 1887, or previously, the wife took rooms in R. Street in the parish of P. She continued to occupy these rooms till her death in 1892. She always paid the rent herself. She received certain money from J. V., but not regular payments. J. V. continued to live with his wife till the time of her death.

**HELD**—that J. V. had not acquired a settlement by residence in the parish of P.

*PLYMOUTH GUARDIANS v. POPLAR GUARDIANS*, [72 J. P. 72—Qr. Sess.]

**(e) In General.**

**8. Removal of Irish-born Pauper—Appeal—Liable to be Removed to Ireland—Order for Removal to Wrong Union—Right of Appeal—Poor Removal Act, 1845** (8 & 9 Vict. c. 117), s. 2—**Poor Removal (No. 2) Act, 1861** (24 & 25 Vict. c. 76), s. 2—**Poor Removal Act, 1863** (26 & 27 Vict. c. 89), s. 7—An appeal will not lie against an order for the removal to Ireland of an Irish-born pauper unless it be proved either that the pauper was settled in, or irremovable from,

England, or that the pauper was not liable to be removed to any place in Ireland.

Therefore an appeal cannot succeed where a pauper has been ordered to be removed to L. in Ireland, if the pauper was in fact liable to be removed to Ireland but to a different union.

**LOCAL GOVERNMENT BOARD FOR IRELAND v. [BLACKBURN UNION]**, 72 J. P. 254—Qr. Sess.

**Affirmed**, 72 J. P. 514; 25 T. L. R. 100; 53 Sol. Jo. 97; [1908] W. N. 241—C. A.

**V. VAGRANCY AND OTHER OFFENCES.**

[No paragraphs in this vol. of the Digest.]

**POOR PRISONERS' DEFENCE ACT, 1903.**

*See CRIMINAL LAW AND PROCEDURE.*

**PORT AND PORT DUES.**

*See SHIPPING AND NAVIGATION.*

**POST OFFICE.**

*See BAILMENT; CRIMINAL LAW, No. 51.*

**POWER OF ATTORNEY.**

*See AGENCY.*

**POWER OF SALE.**

*See BANKERS; MORTGAGES; TRUSTS WILLS.*

**POWERS.**

**POWER OF APPOINTMENT.** COL.

(a) Construction . . . . . 466

[No paragraphs in this vol. of the Digest.]

(b) Exercise . . . . . 467

(c) Release . . . . . 469

[No paragraphs in this vol. of the Digest.]

(d) Validity . . . . . 469

[No paragraphs in this vol. of the Digest.]

(e) In General . . . . . 469

*And see CONFLICT OF LAWS; DEATH DUTIES; EXECUTORS; HUSBAND AND WIFE, No. 14; PERPETUITIES, No. 1; SETTLEMENTS; WILLS.*

**POWER OF APPOINTMENT.****(a) Construction.**

[No paragraphs in this vol. of the Digest.]

## Power of Appointment—Continued.

## (b) Exercise.

1. *General Power of Appointment—By Writing or Writings—Document intended to be a Will but Invalid as such—Wills Act, 1837 (7 Will. 4 and 1 Vict. c. 26), s. 10.*—Under an indenture of settlement A. had a power of appointment at any time or times during her life by any deed or deeds, writing or writings, with or without power of revocation, to be duly executed in the presence of two or more credible witnesses. A. signed a document in the presence of two credible witnesses which purported to be her will, and by which she purported to deal with the subject of the settlement though she did not in terms revoke any of its provisions. The document could not be admitted to probate, not having been signed at the "foot or end" thereof.

HELD—that the document was a "will" within the meaning of the Wills Act, 1837, and, not having been duly executed as a will, was invalid as an execution of the power of appointment.

*In re Broad* ([1901] 2 Ch. 86; 85 L. T. 577—Kekewich, J.) not followed.

IN RE BARNETT, DAWES *v.* IZER, [1908] 1 [Ch. 402; 77 L. J. Ch. 267; 98 L. T. 346; 52 Sol. Jo. 224—Warrington, J.

2. *General Testamentary Power—Provision for "Express Reference."*—A power could be exercised by will "expressly referring to it."

The donee bequeathed all the residue of her estate . . . "which I can dispose of by will in manner I think proper, either as beneficially entitled thereto or under any general power."

HELD—a sufficient reference to exercise the power.

IN RE ROLT, ROLT *v.* BURDETT, [1908] W. N. [76—Warrington, J.

3. *General Testamentary Power—Provision for "Express Reference."*—B. had power to appoint funds by will "expressly referring to this power."

HELD—that the words "over which I shall have any power of disposition by will" contained in her will were a sufficient reference to operate as an execution.

*In re Waterhouse* ((1907), 96 L. T. 688; 98 L. T. 30) applied.

IN RE LANE, BELLI *v.* LANE, [1908] 2 Ch. 581; [77 L. J. Ch. 774—Eady, J.

4. *General Testamentary Power—"Purport to Exercise."*—W., under a testator's will, had power to appoint funds by her own will provided such will "expressly purported to exercise the power."

By her will W. disposed of all of the estate "of which I shall be possessed at the time of my death, or over which I have or shall have any disposing power."

HELD—a good exercise of the power.

Decision of Joyce, J. (96 L. T. 688) affirmed.

IN RE WATERHOUSE, WATERHOUSE *v.* RYLEY, [77 L. J. Ch. 30; 98 L. T. 30—C. A.

5. *General Testamentary Power—Will of English Woman Domiciled Abroad—Will in English Form—Effect of—Wills Act, 1837 (1 Vict. c. 26), s. 27.*—A power of appointment may be exercised by a will valid according to English law, although the testator was domiciled abroad in a country where the will would be informal; such a will is construed according to English law, and sect. 27 of the Wills Act, 1837, is applicable to it.

IN RE BAKER'S TRUSTS, HUNT *v.* BAKER, [1908] [W. N. 161—Parker, J.

6. *Limited Power—Exercisable by Will in Favour of Children—Donee Domiciled in Scotland—Will and Codicil—Holograph Codicil not Attested, but Valid by Scotch Law—Aiding Defective Execution—Codicil Partly Revoking Appointment in Will—Wills Act, 1837 (1 Vict. c. 26), s. 10.*—A domiciled Scotchwoman had power to appoint trust funds amongst her children "by her last will . . . or any codicil thereto to be signed in the presence of and attested by two or more witnesses." By a will duly attested, she appointed the fund amongst three daughters. She also left a series of holograph directions, signed at the end but unattested. By the first of these she referred to the trust funds and gave to each of her three sons £500 of the funds; by the last she cancelled the gift to a son who had died, and gave his £500 to her daughters.

The holograph codicils were valid by Scotch law and were admitted to confirmation with the will, and were also admitted to probate in England as a codicil to it.

HELD—(1) that sect. 10 of the Wills Act, 1837, having no application to a testatrix domiciled in Scotland, did not prevent the codicil from operating as an execution of the power.

*In re Price* ([1900] 1 Ch. 442; 69 L. J. Ch. 225; 82 L. T. 79; 48 W. R. 373—Stirling, J.) followed.

(2) That the codicil only revoked the appointment by the will so far as it was inconsistent with it; and

(3) That the Court would aid the defective execution of the codicil in favour of the two surviving sons.

*Morse v. Martin* ((1865), 34 Beav. 500) followed.

IN RE WALKER, M'COLL *v.* BRUCE, [1908] 1 [Ch. 560; 77 L. J. Ch. 370; 98 L. T. 524; 52 Sol. Jo. 280—Joyce, J.

7. *Power to Appoint by Deed—Appointment—Purported Revocation by Will.*—By settlement executed on the marriage of G. B., certain lands were vested in trustees for a term of years upon trust to raise for younger children such sum not exceeding £20,000, and not less than £10,000, as G. B. should by deed appoint, and in default of appointment the sum of £10,000; the said sum so appointed, or the sum of £10,000, to be paid to all or such one or more of the children as G. B. should by deed, with or without power of revocation and new appointment, or by will or codicil,



**Power of Appointment—Continued.**

appoint. By deed G. B. appointed that a sum of £10,000 should be raised immediately after his death, and a further sum of £10,000 after the death of the survivor of himself and another, but reserved a power of revocation of both said sums by deed or will. Subsequently by his will G. B. appointed the first of said sums among his younger children equally, and revoked the appointment of the second of said sums.

HELD—that the revocation by will of the appointment by deed of the second of said sums was invalid, and accordingly that the sum so appointed remained a good and valid charge.

IN RE GORE-BOOTH'S ESTATE, [1908] 1 I. R. [387—Wylie, J.]

**8. Special Testamentary Powers—Exercise by Will—Later Will—No express Revocation—Whether a later Will an Exercise of Power.**—W., the donee of a special power of appointment, made a will by which she expressly exercised the power. Later, she executed a holograph will in these terms: "I wish to leave at my death everything I have power to will to my husband."

HELD—that she meant to and did exercise her power by the later will, and that it revoked the earlier will.

In re Weston's Settlement, Neeves v. Weston ([1906] 2 Ch. 620; 95 L. T. 581—Buckley, J.) applied.

WRIGLEY v. LOWNDES, [1908] P. 348; 77 L. J. [P. 148—Barnes, Pres.]

**(c) Release.**

[No paragraphs in this vol. of the Digest.]

**(d) Validity.**

[No paragraphs in this vol. of the Digest.]

**(e) In General.**

**9. Fraud upon a Power—Bond—Escrow.**—Mrs. N., the defendant's wife, by a will made in 1862, after her marriage, appointed a sum of £20,000, of which she was entitled to the income under the will of her grandmother, to the defendant absolutely in default of issue. This power of appointment had a proviso against any appointment in favour of P., Mrs. N.'s father, or of any other relative on the paternal side within the fourth degree of consanguinity. At the date of her marriage Mrs. N. executed a deed whereby an annuity of £500 was to be paid to P. out of property other than that which passed under her grandmother's will. In 1870 Mrs. N., being about to travel to New Zealand, confirmed by a codicil the appointment in favour of the defendant, and the defendant gave to P. a bond to pay a sum of £10,000 at Mrs. N.'s death. P. gave a written undertaking not to enforce the bond except as to money left by Mrs. N. to the defendant at his absolute disposal, and Mrs. N. executed a bond for the payment of £5,000 to the defendant's parents if she should survive him. Mrs. N. died in 1905, having made her last will in 1904, whereby she revoked all former wills and appointed part of the £20,000 to the defendant for life, another small part to other

persons, and the balance to the defendant absolutely. This action was brought on the bond by the executors of P.

HELD—that there had been a fraud upon the power of appointment and, further, that the bond had been delivered as an escrow.

EVANS v. NEVILL, Times, February 11th, 1908 [—C. A.]

**10. Partial Exercise—Trust Funds—Limited Range of Investments—Power of Donee of Power to Extend.**—A widow had power under her husband's will to appoint certain trust funds amongst their children; in default of appointment the nine children were to take equally. By the terms of the husband's will, the trust funds could not be invested on mortgages of leaseholds. The widow appointed one-ninth shares in trust for two children, authorising their trustees to invest upon (*inter alia*) mortgages of leaseholds. She allowed the bulk of the funds to pass under her husband's will in default of appointment.

HELD—that after her death the trustees of her husband's will could not invest upon mortgage of leaseholds the portion of the trust funds so passing in default of appointment.

IN RE FALCONER'S TRUSTS, PROPERTY AND [ESTATES CO., LD. v. FROST, [1908] 1 Ch. 410; 77 L. J. Ch. 303; 98 L. T. 536—Warrington, J.]

## PRACTICE AND PROCEDURE.

	COL.
I. SERVICE OF WRIT OF SUMMONS . . .	472
[No paragraphs in this vol. of the Digest.]	
II. SERVICE OUT OF JURISDICTION.	
(a) Breach of Contract performable within Jurisdiction . . .	472
(b) Injunction . . .	473
(c) Miscellaneous . . .	473
(d) Necessary or Proper Party . . .	474
[No paragraphs in this vol. of the Digest.]	
III. SUMMARY JUDGMENT ON SPECIALLY INDORSED WRIT . . .	474
IV. PARTIES.	
(a) Attorney-General . . .	475
(b) Compromise . . .	476
[No paragraphs in this vol. of the Digest.]	
(c) Joinder of Defendants. . .	476
(d) Joinder of Plaintiffs . . .	476
[No paragraphs in this vol. of the Digest.]	
(e) Married Woman. . .	476
[No paragraphs in this vol. of the Digest.]	
(f) Pauper . . .	476
(g) Representation . . .	476
[No paragraphs in this vol. of the Digest.]	
(h) Substituting Plaintiff . . .	476
[No paragraphs in this vol. of the Digest.]	
(i) Third Party Procedure . . .	476
V. JOINDER OF CAUSES OF ACTION . . .	477
[No paragraphs in this vol. of the Digest.]	

**Practice and Procedure--Continued.**

	COL.
<b>VI. PAYMENT INTO COURT</b>	
(a) Acceptance . . . . .	477
[No paragraphs in this vol. of the Digest.]	
(b) Admitting Liability . . . . .	477
[No paragraphs in this vol. of the Digest.]	
(c) Denying Liability . . . . .	477
[No paragraphs in this vol. of the Digest.]	
(d) Generally . . . . .	477
[No paragraphs in this vol. of the Digest.]	
(e) Libel Action . . . . .	477
[No paragraphs in this vol. of the Digest.]	
(f) Trustees . . . . .	477
[No paragraphs in this vol. of the Digest.]	
<b>VII. PAYMENT OUT OF FUND IN COURT</b>	477
[No paragraphs in this vol. of the Digest.]	
<b>VIII. ACTION FOR DECLARATION</b>	477
[No paragraphs in this vol. of the Digest.]	
<b>IX. DISCONTINUANCE</b>	477
<b>X. TRIAL.</b>	
(a) Miscellaneous . . . . .	477
(b) Notice of Trial . . . . .	477
[No paragraphs in this vol. of the Digest.]	
(c) Place of Trial . . . . .	477
[No paragraphs in this vol. of the Digest.]	
(d) Right to Jury . . . . .	479
[No paragraphs in this vol. of the Digest.]	
<b>XI. MOTION FOR NEW TRIAL.</b>	
(a) Costs . . . . .	479
[No paragraphs in this vol. of the Digest.]	
(b) Grounds for ordering New Trial	
(c) Time for serving Notice . . . . .	479
<b>XII. ENTRY OF JUDGMENT</b>	480
[No paragraphs in this vol. of the Digest.]	
<b>XIII. EXECUTION.</b>	
(a) Discovery in Aid . . . . .	480
[No paragraphs in this vol. of the Digest.]	
(b) Scotch Judgment . . . . .	480
[No paragraphs in this vol. of the Digest.]	
(c) Sequestration . . . . .	480
[No paragraphs in this vol. of the Digest.]	
(d) Stay . . . . .	480
[No paragraphs in this vol. of the Digest.]	
(e) Writ of Possession . . . . .	480
[No paragraphs in this vol. of the Digest.]	
(f) In General . . . . .	480
<b>XIV. ATTACHMENT OF DEBTS</b>	480
<b>XV. CHARGING ORDERS</b>	481
<b>XVI. EQUITABLE EXECUTION</b>	482
<b>XVII. ACTIONS BY AND AGAINST FIRMS</b>	482
[No paragraphs in this vol. of the Digest.]	
<b>XVIII. TRANSFER OF ACTIONS</b>	482
[No paragraphs in this vol. of the Digest.]	
<b>XIX. MOTIONS</b>	482
[No paragraphs in this vol. of the Digest.]	
<b>XX. ORIGINATING SUMMONS</b>	482

	COL.
<b>XXI. CHAMBERS IN CHANCERY DIVISION</b>	482

**XXII. APPEALS.**

(a) Appeals to Court of Appeal . . . . .	482
(b) Appeals to House of Lords . . . . .	483
(bb) Appeals to Privy Council . . . . .	483
(c) Arbitration Appeals . . . . .	485
(d) Divisional Court . . . . .	486
(e) Final and Interlocutory Orders . . . . .	486
(f) Miscellaneous . . . . .	486
(g) Official Referee . . . . .	487
[No paragraphs in this vol. of the Digest.]	
(h) Security for Costs . . . . .	487
[No paragraphs in this vol. of the Digest.]	
(i) Time for Appeal . . . . .	487

**XXIII. COSTS.**

(a) Appeal . . . . .	487
[No paragraphs in this vol. of the Digest.]	
(b) Apportionment . . . . .	487
[No paragraphs in this vol. of the Digest.]	
(c) Discretion of Judge . . . . .	487
[No paragraphs in this vol. of the Digest.]	
(d) Documents . . . . .	488
[No paragraphs in this vol. of the Digest.]	
(e) Independent Proceedings . . . . .	488
[No paragraphs in this vol. of the Digest.]	
(f) Miscellaneous . . . . .	488
(g) Security for Costs . . . . .	488
(h) Taxation generally . . . . .	488
(i) Trustees and Executors . . . . .	488
(k) Two Defendants . . . . .	489

**XXIV. STAY OF PROCEEDINGS.**

(a) Actions in different Courts . . . . .	489
(b) Frivolous and Vexatious Actions . . . . .	490
(c) Miscellaneous . . . . .	490

**XXV. MISCELLANEOUS.**

*See also* ADMIRALTY; ARBITRATION; BANKRUPTCY; COMPANIES; CONTEMPT AND ATTACHMENT; COUNTY COURTS; CRIMINAL LAW; DISCOVERY; EVIDENCE; EXECUTION; EXECUTORS; INJUNCTIONS; INTERPLEADER; LIBEL AND SLANDER; LIMITATION OF ACTIONS; LUNATICS, No. 1; PARTNERSHIP; PLEADING; RECEIVERS; SET-OFF; SPECIFIC PERFORMANCES; SHIPPING; TRADE MARKS.

**I. SERVICE OF WRIT OF SUMMONS.**

[No paragraphs in this vol. of the Digest.]

**II SERVICE OUT OF JURISDICTION.**

*See also* ADMIRALTY, No. 1.

**(a) Breach of Contract performable within Jurisdiction.**

1. *Cif. Contract—Ord. 11, r. 1 (c).*—The defendant, who was a foreigner resident at Hamburg, agreed to sell to the plaintiffs, who were merchants carrying on business in England, certain goods, "c.i.f., Tyne-Thames . . . net

**Service out of Jurisdiction—Continued.**

cash against b.l." The goods were shipped on board a vessel (not belonging to the plaintiffs or to the defendants) at Hamburg for the Tyne, and the plaintiffs paid the price in exchange for the bill of lading. Upon the arrival of the goods the plaintiffs, having inspected them, alleged that they were not according to the contract quality, and they obtained leave *ex parte* to issue a writ claiming the return of the money paid or damages for breach of contract, and to serve notice thereof, under Ord. 11, r. 1 (e), on the defendant at Hamburg. The defendant having applied to discharge the order:—

HELD—that the contract being a c.i.f. contract, the alleged breach occurred upon delivery of the goods on board the ship at Hamburg and not in England, and the order giving leave to serve out of the jurisdiction must be discharged. There is no difference in this respect between an action for non-delivery of goods and an action for delivery of goods not according to contract.

*Barrow v. Myers* ((1888), 52 J. P. 345; 4 T. L. R. 411) overruled.

CROZIER, STEPHENS & CO. v. AUERBACH, [1908] 2 K. B. 161; 77 L. J. K. B. 873; 99 L. T. 225; 24 T. L. R. 409; 52 Sol. Jo. 335—C. A.

**(b) Injunction.**

2. *Company Registered in Scotland—Ord. 11, r. 1 (f).*—If with a view to founding a right to serve his writ out of the jurisdiction a plaintiff adds to his claim for damages an impossible claim for an injunction, or if, in the circumstances of the case, the Court considers that an injunction could not possibly be granted and is not seriously asked for, the Court, in the exercise of its discretion, will not allow service of the writ out of the jurisdiction.

The plaintiffs, an English limited company, sued the defendants, a limited company registered in Scotland, for damages for libel contained in a circular issued by the defendants, and for an injunction restraining the defendants from continuing to issue the circular. In the circular complained of the defendants alleged that they had the exclusive right of publishing post-cards containing views of the Franco-British Exhibition, and that the plaintiffs were infringing that right. Leave to serve the writ out of the jurisdiction having been granted at chambers:—

HELD—that the order granting leave was right, as the case was one in which an injunction could properly be granted, and that it was no answer for the defendants to say that they would not issue any more circulars.

ALEXANDER & CO., LD. v. VALENTINE AND SONS [1907], LD., 25 T. L. R. 29; 53 Sol. Jo. 13—C. A.

**(c) Miscellaneous.**

3. *Appearance—Conditional Appearance—Time for Applying to Set Aside Service—Ord. 12, r. 30.*—The defendant, who was served with a writ out of the jurisdiction, entered a conditional appearance thereto, the memorandum of appearance having the usual statement stamped upon

it, that "this appearance is to stand as unconditional unless the defendant applies within ten days to set aside the writ or service thereof, and obtains an order to that effect." The defendant on the tenth day after the appearance took out a summons, returnable on a later day, to have the service set aside.

HELD—that the actual order setting aside the service need not be made within the ten days, and that therefore the application was in time.

BONNELL v. PRESTON, 24 T. L. R. 756; 52 Sol. Jo. 621; [1908] W. N. 155—C. A.

**(d) Necessary or Proper Party.**

[No paragraphs in this vol. of the Digest.]

**III. SUMMARY JUDGMENT ON SPECIALLY INDORSED WRIT.**

4. *Action for Money Lent—Defence under Money-lenders Act—Part of Principal admittedly Due—Summary Judgment—R. S. C., Ord. 14, r. 4—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1.*—Where a plaintiff sues for money lent and applies for summary judgment under Ord. 14 and the defendant sets up a defence under the Money-lenders Act, 1900, but admits that he has not repaid all the money actually advanced, the proper course is to allow the plaintiff to sign judgment for the amount so admitted to be due without interest, and to give leave to defend as to the residue of the claim.

*Wells v. Allott* ([1904] 2 K. B. 842; 73 L. J. K. B. 1023; 20 T. L. R. 799—C. A.) explained and distinguished.

LAZARUS v. SMITH, [1908] 2 K. B. 266; 77 L. J. [K. B. 791; 99 L. T. 77; 24 T. L. R. 592; 52 Sol. Jo. 481—C. A.]

5. *Contract Price Payable by Instalments—Action to Recover Instalment—"Debt or Liquidated Demand"—Ord. 3, r. 6; Ord. 14, r. 1.*—The plaintiffs, who were shipbuilders, agreed to build a ship for the defendants for a certain price to be paid by specified instalments as the building of the ship progressed; and by the agreement upon payment of the first instalment the hull and materials were to become the absolute property of the defendants, subject only to the vendors' lien for unpaid purchase-money; and if any instalment remained unpaid for fourteen days the plaintiffs were to be at liberty to suspend the work, or they might complete and sell the ship to satisfy their claim. The defendants did not pay the first instalment when it became due, and the plaintiff brought an action to recover the amount thereof, and applied for judgment under Ord. 14.

HELD—that the claim was for a "liquidated demand" within the meaning of Ord. 3, r. 6, and that therefore Ord. 14, r. 1, applied. Those Orders are not confined to cases where the old action of debt would have been maintainable.

WORKMAN, CLARK & CO., LD. v. LLOYD [BRAZILEÑO, [1908] 1 K. B. 968; 77 L. J. K. B. 953; 99 L. T. 477; 24 T. L. R. 458—C. A.]



### Summary Judgment on Specially Indorsed Writ —Continued.

6. *Specially Indorsed Writ—Amendment without Leave—Motion for Final Judgment.*—Where a plaintiff by amendment converts an ordinary into a specially indorsed writ, he cannot obtain final judgment upon the amended writ without service of the amended writ upon the defendant; nor can he obtain such judgment to the prejudice of the defendants' right under Ord. 28, rr. 4 and 5.

*Guinness v. Caraher* ([1900] 2 I. R. 505) followed.

*HAIGH v. PURCELL*, [1908] 2 I. R. 56—C. A.

## IV. PARTIES.

### (a) Attorney-General.

7. *Practice—Parties—Attorney-General a Necessary Party—Water Supply—Provisions of Local Act—Action for Injunction—Absence of Attorney-General—Amendment—Terms.*—The plaintiff council brought an action against the defendant company, alleging in its statement of claim that the company had failed to comply with sect. 10 of the Pontypridd Waterworks Act, 1892 (55 & 56 Vict. c. cviii.), which provided that "for the protection of the . . . local authorities" certain provisions imposing obligations as to the quantity and quality of the water to be supplied by the defendants to the district of the plaintiffs should have effect; and seeking for a mandatory injunction to compel the company to do so. The company, by its defence, alleged that the statement of claim disclosed no cause of action. Subsequently—more than a year after the commencement of the action and when the action was ready for trial—the plaintiffs applied for and obtained leave to amend by adding the Attorney-General, the terms upon which such amendment ought to be allowed being left to the Judge at the trial of the action. The defendants now raised the objection that the action as originally constituted was unfounded and disclosed no cause of action, the plaintiffs having no interest conferred upon them by sect. 10 of the Act, or otherwise, entitling them to take such proceedings.

HELD—that, following the decision in *Devonport Corporation v. Tozer* ([1903] 1 Ch. 759; 72 L. J. Ch. 411; 67 J. P. 269; 52 W. R. 6; 88 L. T. 113; 19 T. L. R. 257—C. A.), the only proper person to enforce the provisions of the local Act was the Attorney-General, and that the action as originally constituted disclosed no cause of action.

Leave to amend was given on the terms laid down in *Ayscough v. Bullar* ((1889), 41 Ch. D. 341; 58 L. J. Ch. 474; 60 L. T. 471; 137 W. R. 529—C. A.), viz., that the plaintiffs should pay the costs of the action up to and including the date of the order giving leave to amend, and that the Attorney-General should only be entitled to such relief as he could have claimed if the action had been commenced on that date.

ATTORNEY-GENERAL AND RHONDDA URBAN [DISTRICT COUNCIL *v.* PONTYPRIDD WATERWORKS CO., [1908] 1 Ch. 388; 77 L. J. Ch.

237; 72 J. P. 48; 98 L. T. 275; 24 T. L. R. 196; 6 L. G. R. 397—Warrington, J.

See also *WATERWORKS*, No. 5.

### (b) Compromise.

[No paragraphs in this vol. of the Digest.]

### (c) Joinder of Defendants.

8. *Misjoinder of Claims—Striking Out Embarrassing Statement of Claim—Election to Proceed against One Defendant—R. S. C., Ord. 16, r. 4.*—The plaintiff claimed, as against one defendant, who had purchased the plaintiff's business, a sum of £5,563 in respect of capital due to him from the business. He also claimed, as against another defendant who had been appointed receiver and agent to wind up the business, damages for negligence. On a motion by the first-named defendant to strike out the statement of claim as embarrassing:—

HELD—that the plaintiff must elect which of the two defendants he would proceed against.

HELD ALSO—that the application was properly made by motion.

*GREENWOOD v. GREENWOOD*, 53 Sol. Jo. 61—  
[Eve, J.]

### (d) Joinder of Plaintiffs.

[No paragraphs in this vol. of the Digest.]

### (e) Married Woman.

[No paragraphs in this vol. of the Digest.]

### (f) Pauper.

9. *Right to Sue in forma pauperis—Married Woman—Annuity Subject to Restraint against Anticipation—Husband not Joining in Affidavit as to Means—R. S. C., Ord. 16, r. 22.*—A married woman, whose only income, apart from what she earned in teaching one or two girls, was an annuity of £52 a year, subject to restraint on anticipation, made an affidavit, in which her husband did not join, in which she deposed that she was not worth £25, her wearing apparel and the subject-matter of the action alone excepted.

HELD—that she was not entitled to sue *in forma pauperis*.

*Semble*, the husband of a married woman who seeks to sue *in forma pauperis* must join in her affidavit as to means.

*RE ATKINS, SMITH v. ATKINS*, 53 Sol. Jo. 61; [1908] W. N. 228—Eve, J.

And see No. 43, *infra*.

### (g) Representation.

[No paragraphs in this vol. of the Digest.]

### (h) Substituting Plaintiff.

[No paragraphs in this vol. of the Digest.]

### (i) Third Party Procedure.

10. *Leave to Issue Notice—Notice to Plaintiff—When Required—R. S. C., Ord. 16, r. 48.*—An application in the Chancery Division for leave to issue and serve a third party notice may be made

**Parties—Continued.**

*ex parte*, and should be so made unless the Court or Judge direct notice of it to be served on the plaintiff or some other person.

*Wye Valley Ry. Co. v. Hawes* ((1880) 16 Ch. D. 489; 50 L. J. Ch. 225; 43 L. T. 715; 29 W. R. 177—C. A.) discussed.

*FURNESS, WITHEY & CO., LD. v. PICKERING*, [1908] 2 Ch. 224; 77 L. J. Ch. 615; 99 L. T. 142; 52 Sol. Jo. 551—Joyce, J.

**V. JOINDER OF CAUSES OF ACTION.**

[No paragraphs in this vol. of the Digest.]

**VI. PAYMENT INTO COURT.****(a) Acceptance.**

[No paragraphs in this vol. of the Digest.]

**(b) Admitting Liability.**

[No paragraphs in this vol. of the Digest.]

**(c) Denying Liability.**

[No paragraphs in this vol. of the Digest.]

**(d) Generally.**

[No paragraphs in this vol. of the Digest.]

**(e) Libel Action.**

[No paragraphs in this vol. of the Digest.]

**(f) Trustees.**

[No paragraphs in this vol. of the Digest.]

**VII. PAYMENT OUT OF FUND IN COURT.**

[No paragraphs in this vol. of the Digest.]

**VIII. ACTION FOR DECLARATION.**

[No paragraphs in this vol. of the Digest.]

**IX. DISCONTINUANCE.**

**11. Notice of — Proceeding Taken in Action after Receipt of Defence—Delivery of Amended Statement of Claim—R. S. C., Ord. 26, r. 1.]**—To deliver an amended statement of claim is to “take a proceeding in the action after receipt of defence” with the meaning of Ord. 26, r. 1.

*VICKERS, SONS & MAXIM, LD. v. COVENTRY [ORDNANCE WORKS, LD.]*, [1908] W. N. 12—Warrington, J.

**X. TRIAL.****(a) Miscellaneous.**

**12. Right of Audience—Litigant in Person—Company—Managing Director.]**—The managing director of a company cannot appear as advocate to represent the company.

*SCRIVEN v. JESCOTT (LEEDS), LD.*, 53 Sol. Jo. [101—Bray, J.

**13. Fact of Payment in to be kept from Jury—Publication of Fact in Newspaper during Trial.]**—During the progress of this trial a statement appeared in a newspaper that a certain amount had been paid into Court.

Where there has been a payment into Court, that fact is by law to be kept from the knowledge of the jury, and newspapers must take great care not to publish it during the progress of the trial. *LORRAINE v. ILLUSTRATED LONDON NEWS AND [SKETCH, LD.]*, *Times*, May 29th, 1908—Jelf, J.

**14. Payment of Jurors—Solicitor's Responsibility.]**—At the close of the trial of an action no one was in attendance from the office of the plaintiff's solicitor to pay the fees of the jury and the sheriff's fee. The Judge directed that the solicitor should attend on the following Monday to give an explanation. Accordingly the solicitor attended and stated that his clerk, who had left the Court, did not think that the case would be over so soon. The Judge said that, as the solicitor was responsible in the matter, he would have to wait on each juryman personally at his address, get a receipt for the fee, and produce it to the officer of the Court.

*SKEAT v. LONDON GENERAL OMNIBUS CO.*, [Times, May 5th, 1908—Bray, J.

**15. Witnesses—Probate, Divorce, and Admiralty Division—Witnesses out of Court—Medical Witnesses.]**—The rule of the Probate, Divorce, and Admiralty Division that in all contested cases witnesses should remain out of Court until called into the witness-box does not apply to medical witnesses.

*GADD v. MUNDAY AND ANOTHER*, *Times*, [July 15th, 1908—Deane, J.

**16. Witnesses—Oath—Witness Desiring to be Sworn on his Own Testament—Oaths Act, 1838 (1 & 2 Vict. c. 105).]**—A county court judge refused to allow a witness, who was a doctor, to be sworn on a book which he produced, and which he stated was a Testament, holding that, if the doctor preferred not to kiss the Court testament, he might take the oath in the Scotch form.

Per Phillimore, J.—The county court judge could have compelled the witness to take the oath in one of these two ways by exercising his powers as to contempt of Court.

*RABEY v. BIRCH*, 72 J. P. 106—Div. Ct.

**17. Separate and Distinct Causes of Action—Breach of Warranty—Misrepresentation—Duty to put Separate Issues to Jury.]**—The plaintiff brought an action for damages for breach of warranty and fraudulent misrepresentation on the sale of a violin. The jury returned a general verdict for the plaintiff after the Judge had left the Court. On the following day the Judge directed judgment to be entered in accordance with the verdict. The defendants applied for a new trial.

**HELD**—that where it is material to the defendant on which of two separate causes of action, such as a breach of contract and a tort, he is held liable, the two causes of action ought to be left separately to the jury, and there ought to be separate findings by the jury, and that there must be a new trial.

*HITCHCOCK v. THE STAINER MANUFACTURING [Co.]*, *Times*, May 8th, 1908—C. A.

**(b) Notice of Trial.**

[No paragraphs in this vol. of the Digest.]

**(c) Place of Trial.**

[No paragraphs in this vol. of the Digest.]

**Trial**—*Continued.*

(d) **Right to Jury.**

[No paragraphs in this vol. of the Digest.]

**XI. MOTION FOR NEW TRIAL.**

(a) **Costs.**

[No paragraphs in this vol. of the Digest.]

(b) **Grounds for Ordering New Trial.**

**18. Action for Negligence—Evidence both Ways—Special Leave for Cross Appeal nunc pro tunc.**—In an action by a widow claiming damages in respect of the death of her husband, who had been run over by a tramcar, the jury found negligence and negatived contributory negligence. On the defendants' appeal the Court of Appeal ordered a new trial; but the defendants further appealed to the Privy Council asking for judgment on the ground that there was no evidence of negligence.

**HELD**—that, as there was evidence both ways properly submitted to the jury, a new trial had been wrongly ordered; and that the Court of Appeal ought not to have given effect to their own conclusions of fact in preference to those arrived at by the jury.

The plaintiff was given special leave to appeal *nunc pro tunc* against the order for a new trial, and the order was reversed, the defendants' appeal being dismissed.

TORONTO RY. CO. *v.* KING, [1908] A. C. 260; 77 [L. J. P. C. 77; 98 L. T. 650—P. C.]

**19. Findings of Jury—Appeal against—Fire Insurance Policies—Earthquake Exceptions—Jamaica.**—This was an appeal from a judgment of the Supreme Court of Jamaica, dismissing a motion by the appellants for judgment or a new trial in an action brought by the respondents under policies of fire insurance of the respondents' premises, which were destroyed by fire on January 14th, 1907, the day of the great earthquake. The principal question was whether the fire that did the damage was occasioned by earthquake, so as to fall within clauses in the policies protecting the appellants from liability for damage caused by such fires. The jury, in answer to questions left to them, found that the fire which destroyed the respondents' premises (1) was not occasioned by, and did not happen through, an earthquake; (2) did not occur during or in consequence of an earthquake. The substantial ground of appeal was that the verdict was wrong.

**HELD**—that it is not enough for appellants to show that adverse criticism may justly be applied to the verdict of a jury or to the evidence on which it is based, or to show that a contrary verdict might well have been found and would have been preferred by the members of the tribunal appealed to; and that the decision of a jury upon questions of fact can only be interfered with by an appellate tribunal if it be shown that that decision could not reasonably have been arrived at upon the evidence before them.

**HELD FURTHER**, on review of the evidence, that the jury might reasonably have considered

the fire in question to be due to the spread of one, or of both, of two other fires; that the jury might reasonably have thought that one of the two fires was not shown to have resulted from the earthquake; and that the jury might reasonably have held that the other fire broke out before the earthquake.

SCOTTISH UNION AND NATIONAL FIRE INSURANCE CO. *v.* ALFRED PAWSEY & CO.,  
Times, October 17th, 1908—P. C.

See also Nos. 28, 29, *infra*.

(c) **Time for Serving Notice.**

**20. Findings of Jury—Reference for Report as to Amount Due—Judgment at a Later Date—R. S. C. Ord. 39, r. 4.**—At the trial of an action, the jury answered certain questions in favour of the plaintiff, and the Judge directed that the amount to be paid by the defendant to the plaintiff should be referred for assessment to a referee, who should report to the Judge. The referee having reported, the Judge gave judgment for the plaintiff for the amount assessed. The defendant then gave notice of motion for a new trial.

**HELD**—that the notice was too late, as the time specified in Ord. 39, r. 4, ran from the date of the findings of the jury and not from the judgment of the Judge.

GREENE *v.* CROOME, [1908] 1 K. B. 277; 77 [L. J. K. B. 68; 98 L. T. 115; 24 T. L. R. 89—C. A.]

**XII. ENTRY OF JUDGMENT.**

[No paragraphs in this vol. of the Digest.]

**XIII. EXECUTION.**

(a) **Discovery in Aid.**

[No paragraphs in this vol. of the Digest.]

(b) **Scotch Judgment.**

[No paragraphs in this vol. of the Digest.]

(c) **Sequestration.**

[No paragraphs in this vol. of the Digest.]

(d) **Stay.**

[No paragraphs in this vol. of the Digest.]

(e) **Writ of Possession.**

[No paragraphs in this vol. of the Digest.]

(f) **In General.**

See No. 24, *infra*.

**XIV. ATTACHMENT OF DEBTS.**

See also COUNTY COURTS, No. 10.

**21. Garnishee Proceedings—Appeal—Issue Tried by a Master—Appeal from his Decision—R. S. C. Ords. 40, rr. 6, 6A; 54, r. 21.**—When a Master orders an issue to be tried before him in garnishee proceedings an appeal lies to a Divisional Court against his decision in such issue.

BLAIR *v.* CLARK; GRAYDON, GARNISHEE, [1908] 2 K. B. 548; 77 L. J. K. B. 647; 99 L. T. 172; 52 Sol. Jo. 498—Div. Ct.]

**22. Gratuity to Employee in Public Service—Compassionate Allowance—Whether Attachable.**—A gratuity to a person who, having been



**Attachment of Debts—Continued.**

an employee in the public service, has retired from ill-health, awarded by the Lords Commissioners of the Treasury, under sect. 6 of the Superannuation Act, 1859, being a mere compassionate allowance and not payable as of right, is not attachable to answer a judgment against such employee.

TIMOTHY v. DAY, [1908] 2 I. R. 26—C. A.

And see No. 25, *infra*.

**XV. CHARGING ORDERS.**

See also BANKERS, No. 6.

**23. Charging Order Absolute—Contingent Equitable Interest of Judgment Debtor—Government Stocks and Stock in the Bank of England—Notice of Order to the Bank—Effect upon the Legal Interest—Transfer at the Direction of the Trustee in Whose Name the Stock is Standing—Duty of the Bank to Transfer Notwithstanding the Charging Order—Notice in Lieu of Distringas—Practice—R. S. C., Ord. 46.]**—Where a judgment creditor has obtained a charging order absolute upon the contingent equitable interest of a judgment debtor in Government and Bank of England Stock, standing in the name of a trustee, the Bank is compellable to transfer the respective stocks at the direction of the trustee, notwithstanding that notice of the charging order has been served upon the Bank. The judgment creditor can protect his rights by giving notice to the trustee and by issuing a notice in lieu of distringas upon the Bank.

ADAM v. BANK OF ENGLAND, 52 Sol. Jo. 682—[Joyce, J.]

**24. Judgment Debt Payable by Instalments—Default in Payment of Instalments—Jurisdiction to Grant Charging Order—Ord. 42, r. 24—Execution Act, 1844 (7 & 8 Vict. c. 96), s. 61—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 103.]**—An order was made under sect. 5 of the Debtors Act, 1869, by the Judge of the High Court exercising jurisdiction in bankruptcy, for payment of a judgment debt by instalments. The instalments having fallen into arrear, the plaintiff applied to a Judge at chambers for a charging order on certain money in Court belonging to the judgment debtor.

HELD—that the Judge had power, under Ord. 42, r. 24, to direct a charging order, which was a form of execution, to issue in respect of the amount of the instalments in arrear.

*Semble*, the Judge at Chambers had power under sect. 61 of the Execution Act, 1844, to order execution to issue for the whole unpaid amount of the judgment debt.

WOODHAM SMITH v. EDWARDS, HASLAM & [CO., GARNISHEES, [1908] 2 K. B. 899; 77 L. J. K. B. 1056; 24 T. L. R. 864; 52 Sol. Jo. 680—C. A.]

Y. D.

**XVI. EQUITABLE EXECUTION.**

**25. Receiver—Postal Service—Reward for Past Services only—Future Services also.]**—The Court will not appoint a receiver by way of equitable execution over future instalments of a superannuation allowance, granted under sect. 10 of the Superannuation Act, 1859, to a public servant, if such servant is, at the time of the application to appoint a receiver, under the age of sixty years, and therefore still liable to serve the Crown if called upon and fit to do so.

MACDONALD v. O'TOOLE, [1908] 2 I. R. 386—[K. B. D.]

And see No. 22, *supra*.

**XVII. ACTIONS BY AND AGAINST FIRMS.**

[No paragraphs in this vol. of the Digest.]

**XVIII. TRANSFER OF ACTIONS.**

[No paragraphs in this vol. of the Digest.]

**XIX. MOTIONS.**

[No paragraphs in this vol. of the Digest.]

**XX. ORIGINATING SUMMONS.**

**26. Covenant to Pay Annuity—Evidence that Annuitant is Alive—Jurisdiction of Court—R. S. C., Ord. 54A.]**—The Court has no jurisdiction under Ord. 54A, to make on an originating summons a declaration as to what evidence of an annuitant being alive ought to be furnished to the persons liable to pay the annuity.

HUNT v. HUNT, 97 L. T. 822—C. A.

**XXI. CHAMBERS IN CHANCERY DIVISION.**

**26a. Order for Accounts—Certificate of Master after Inquiry—Further Consideration—Admission of Evidence after Certificate.]**—Although it is impossible to say that there is no jurisdiction in the Court to admit an affidavit which goes to merits on further consideration, yet the discretion must be exercised with great caution, and ought not to be exercised where a defendant trustee, having notice of the allegations of neglect of duty made against him, has deliberately refrained from filing evidence to disprove the charge before certificate.

RE LEA'S SETTLEMENT: LEA v. LEE, 124 [L. T. Jo. 335—Eve, J.]

**XXII. APPEALS.****(a) Appeals to Court of Appeal.**

**27. "Criminal Cause or Matter"—Distress for Rent—Excessive Charges—Proceeding before Justices to Recover Treble the Excess—Penalty—Distress (Costs) Act, 1817 (57 Geo. 3, c. 93), ss. 1, 2—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 47.]**—An appeal will not lie from the judgment of the King's Bench Division upon a case stated by justices on a summons to recover treble the amount of the excess alleged to have been illegally charged by a bailiff in respect of the costs of a distress for rent, under sect. 2 of the Distress (Costs) Act, 1817, the matter being a

**Appeals—Continued.**

"criminal cause or matter," within sect. 47 of the Judicature Act, 1873.

ROBSON *v.* BIGGAR, [1908] 1 K. B. 672; 77 [L. J. K. B. 203; 97 L. T. 859; 24 T. L. R. 125—C. A.]

**28. Findings of Fact by Judge of Chancery Division—Credibility of Witnesses.**—The Court dismissed this appeal from the judgment of Neville, J., holding that there was evidence upon which the learned judge was justified in coming to the conclusion that an actionable nuisance had been created.

*Per* Buckley, L. J.—Speaking generally, the law is that upon a question of fact, the decision of a county court judge, the decision of the Railway and Canal Commission, and (practically) the finding of a jury, where there is evidence upon which they could so find, are not open to review; but the decision of a judge of the Chancery Division is open to review. The rule on this point is a survival from the time when evidence in a Chancery suit was given on affidavit. When however the question depends on the credibility of witnesses, the opinion of the judge who heard the witnesses is in most cases conclusive.

RICHMOND *v.* CROWN FIRE LIGHTER Co., *Times*, [July 10th, 1908—C. A.]

**29. Question of Fact—Judge Sitting without a Jury.**—The practice in regard to appeals from a Judge alone upon a question of fact explained.

RE WAGSTAFF, WAGSTAFF *v.* JALLAND, [1908] 1 Ch. 162; 77 L. J. Ch. 190; 98 L. T. 149; 24 T. L. R. 136—C. A.]

And see Nos. 18, 19, *supra*.

**(b) Appeals to House of Lords.**

**30. Ireland—Landlord and Tenant—Appeal from Decision of Land Judge—Land Law (Ireland) Act, 1896 (59 & 60 Vict. c. 47), s. 31 (4).**—An appeal lies to the House of Lords from a decision of the Irish Court of Appeal on appeal from a decision of the Land Judge.

DE VESCI (COUNTESS) *v.* O'CONNELL, [1908] A. C. 298; [1908] 1 I. R. 452; 77 L. J. P. C. 81; 99 L. T. 206; 24 T. L. R. 638—H. L.]

**(bb) Appeals to Privy Council.**

See also DEPENDENCIES AND COLONIES.

**31. Appeal—Special Leave to Appeal—Criminal Case.**—The fact that Judges in the Court below were not unanimous in a criminal case, where the evidence was disputed, is not a sufficient ground for giving special leave to appeal.

*In re Dillet* ((1887), 12 App. Cas. 459 56; L. T. 615; 36 W. R. 81; 16 Cox, C. C. 241—P. C.) followed.

TSHINGUMUZI *v.* ATTORNEY-GENERAL FOR [NATAL, [1908] A. C. 248; 77 L. J. P. C. 110; 98 L. T. 601—P. C.]

**32. Special Leave to Appeal—Criminal Case—Lapse of Time.**—In a criminal case in which more than three years had elapsed since the

expiration of the sentence on the petitioner, and there was no *prima facie* case of a miscarriage of justice disclosed, their Lordships refused leave to appeal.

BADGER *v.* ATTORNEY-GENERAL FOR NEW [ZEALAND, 97 L. T. 621; 21 Cox, C. C. 539—P. C.]

**33. Special Leave to Appeal—Important Question of Law, but No Sufficient Doubt.**—Special leave to appeal from the Supreme Court of Canada will not be granted where the decision appears to be plainly right, or not attended by reasonably sufficient doubt.

TOWNSEND *v.* COX, [1907] A. C. 514; 76 [L. J. P. C. 98; 97 L. T. 620—P. C.]

**34. Special Leave to Appeal—Royal Prerogative—Judgment "Final and Conclusive"**—*New Zealand Act, No. 43 of 1894, s. 93.*—By sect. 93 of the New Zealand Act, No. 43 of 1894, a Native Appellate Court was established to deal with legal rights in matters of land, succession, and probate. Its decisions were to be "final and conclusive."

*HELD*—that as an appeal would have lain in such matters had the Court in question not been established, and as the Act did not by express words take away the Royal Prerogative, leave to appeal could be given.

IN RE WI MATUA, [1908] A. C. 448—P. C.]

**35. Special Leave to Appeal—Jurisdiction of High Court of Australia—Constitutional Powers of Commonwealth and States—Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12), s. 74—Judiciary Act, 1903 (No. 6 of 1903), s. 39.**—The Judicial Committee of the Privy Council refused to give special leave to appeal from a decision of the High Court of Australia (which had refused to follow a previous decision of the Privy Council) upon the grounds that the point in issue had been now definitely settled by subsequent legislation, and therefore could not arise in future, and that the amount in dispute or indirectly affected was small. The point in issue was whether an officer of the Australian Commonwealth resident and receiving his salary in one of the States of the Commonwealth was liable to be assessed in respect thereof to income tax imposed by an Act of that State.

THE COMMISSIONERS OF TAXATION FOR NEW [SOUTH WALES *v.* BAXTER, WEBB *v.* CROUCH, WEBB *v.* FLINT, [1908] A. C. 214; 77 L. J. P. C. 67; 98 L. T. 221; 24 T. L. R. 249—P. C.]

**36. Special Leave to Appeal—Third Petition Raising virtually the same Point—Respondents' Costs in Previous Petitions Unpaid.**—A petition for special leave to appeal from a judgment of the Supreme Court of Natal having been dismissed, counsel for the respondents said that this was the third petition by the same person, raising virtually the same point, and that the respondents' costs in the first two petitions, which their Lordships had ordered the petitioner to pay, had not yet been paid. He therefore asked their Lordships not to receive any more

**Appeals—Continued.**

petitions in the name of the present petitioner until their previous orders as to costs had been complied with.

Their Lordships said that they had no power to give any such direction, but the present petition would be dismissed with costs.

**TILONKO v. ATT.-GEN. OF NATAL AND OTHERS**  
[*Times*, May 28th, 1908—P. C.]

**37. Special Leave to Appeal—Appealable Amount—Cape Charter of Justice, 1832—Small Amount—Test Case Involving Larger Amounts.**—The Supreme Court of the Cape of Good Hope gave judgment for the respondents and declined leave to appeal to the Judicial Committee of the Privy Council, holding that under the Cape Charter of Justice, 1832, they had no jurisdiction to give leave where the amount involved was less than £500. The suit by agreement between the parties was tried as a test case and involved only £250, but the total amount in dispute was nearly £30,000. Their Lordships said that they would humbly advise his Majesty to grant special leave to appeal.

**STEPHAN AND ANOTHER v. BOARD OF EXECUTORS**  
[OF CAPE TOWN AND OTHERS, *Times*, February 5th, 1908—P. C.]

**38. Special Leave to Appeal—Criminal Law—British Columbia.**—The Judicial Committees of the Privy Council will be very slow to interfere, at the instance of the prosecutor, with a new criminal trial directed by the Court of Appeal in favour of an accused. On that ground they rejected a petition for special leave to appeal from a judgment of the Supreme Court of British Columbia directing a new trial of the respondent on both the charges on which he had been convicted.

**R. v. WALKEM**, *Times*, July 28th, 1908—P. C.

**39. Special Leave to Appeal—Crown Lands in Australia—Nominal Defendant for Crown—Costs.**—In a petition for special leave to appeal from a judgment of the High Court of Australia, the petitioner was the nominal defendant under the Claims Against the Government and Crown Suits Act, 1897, in an action to recover damages against the Crown for the interruption of the quiet enjoyment of certain lands held under an occupation licence:

The petition was granted on condition that the Crown paid the costs.

**WILLIAMS v. O'KEEFE AND OTHERS**, *Times*, [July 15th, 1908—P. C.]

**(c) Arbitration Appeals.**

**40. Enforcing Award—Practice and Procedure—Appeal Direct to Court of Appeal—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 1, 12—Judicature Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 4.**—An application to enforce an award under sect. 12 of the Arbitration Act, 1889, is a matter of practice and procedure within the meaning of sect. 1, sub-sect. 4, of the Judicature Act, 1894, and an appeal from an order made

thereon by a Judge at chambers lies direct to the Court of Appeal.

**IN RE COLMAN AND WATSON**, [1908] 1 K. B. [47; 77 L. J. K. B. 121; 97 L. T. 857; 24 T. L. R. 39—C. A.]

**(d) Divisional Court.**

See No. 21, *supra*.

**(e) Final and Interlocutory Orders.**

**41. Appeal from Chambers—“Practice and Procedure”—Order upon Originating Summons Directing Solicitor to Pay Money Under an Agreement—“Final Order”—Supreme Court of Judicature Act, 1894 (57 & 58 Vict. c. 16), s. 1 (4).**—The defendant, a solicitor, had given a written undertaking (not in an action) to pay money to the plaintiff. Upon an originating summons by the latter, a Judge in chambers ordered the defendant to pay the money.

**HELD**—that the order was a “final” order, and that the matter was not one of “practice and procedure,” and that therefore an appeal did not lie direct to the Court of Appeal.

**IN RE MARCHANT**, [1908] 1 K. B. 998; 77 L. J. [K. B. 695; 98 L. T. 823; 24 T. L. R. 375; 52 Sol. Jo. 314—C. A.]

**42. Order on Summons Made in Partition Action—Interlocutory or Final—Time for Appealing—R. S. C., Ord. 58, r. 15.**—By the judgment in a partition action which was made in default of defence on December 4th, 1906, the usual accounts and inquiries were directed, and certain liberty to apply for a sale was given. It was further ordered that a partition should be made of such of the property as to which a sale should not be applied for and granted, and the further consideration of the action was adjourned. On June 27th, 1907, the Master made his certificate, and on July 6th, 1907, the plaintiffs in the action took out a summons for the partition of the property remaining unsold. At the request of A., who opposed the application, the summons was adjourned to the Judge and came on for hearing with the further consideration of the action. The Judge made an order on the further consideration, which merely directed payment of the costs of the action and an order for the partition in accordance with the terms of the summons. A. appealed against the latter order, his notice of appeal being served nearly three months after the order was made.

**HELD**—that the order appealed from was only an order for working out the rights of the parties and was therefore interlocutory and not final, and that consequently under Ord. 58, r. 15, the appeal was out of time.

**NORTON v. NORTON**, 126 L. T. Jo. 6—C. A.

**(f) Miscellaneous.**

**43. Appealing in forma pauperis—Means of Applicant—Retired Police Constable—Inalienable Pension—Police Act, 1890 (53 & 54 Vict. c. 45), s. 7 (1)—R. S. C., Ord. 16, r. 22.**—An applicant for leave to prosecute an appeal in forma



**Appeals—Continued.**

*pauperis* under Ord. 16, r. 22, which requires proof that the applicant is not worth £25, was in receipt of a weekly pension as a retired police-constable amounting to £73 a year, which by the Police Act, 1890, was made inalienable except for the benefit of his family, and he swore that this pension was inadequate to provide the necessities of life for himself and wife after paying the rent of their place of residence, and that he was not worth £25.

**HELD**—that he had failed to comply with the requirements of the rule.

*Boddington v. Woodley* ((1842), 5 Beav. 555) followed.

*KYDD v. CITY OF LIVERPOOL WATCH COM-  
[MITTEE*, 72 J. P. 113; 24 T. L. R. 257; 52  
Sol. Jo. 223; [1908] W. N. 26—C. A.

*And see* No. 9, *supra*.

**44. Interest—Decision Reversed in House of Lords—Action on Marine Policy—Civil Procedure Act, 1833** (3 & 4 Will. 4, c. 42), ss. 28, 29].—In an action upon a policy of marine insurance claiming for a total loss of the ship insured, the House of Lords, reversing the judgment of the Court of Appeal and of the Judge at the trial, held that the value of the wreck ought to be taken into account in ascertaining whether the ship was a constructive total loss, and that upon that basis there was a constructive total loss of the ship entitling the plaintiffs to recover, and remitted the cause to the High Court to do what was just and consistent with their judgment. The House of Lords said nothing about interest.

**HELD**—that the assured ought to have interest on the sum due from the date of the judgment of the trial.

*MACBETH & CO. v. MARITIME INSURANCE CO.*,  
[24 T. L. R. 559—C. A.

**(g) Official Referee.**

[No paragraphs in this vol. of the Digest.]

**(h) Security for Costs.**

[No paragraphs in this vol. of the Digest.]

**(i) Time for Appeal.**

**45. Extending Time—Trial by Judge and Jury—Appeal against Ruling of Judge—Mistake of Counsel—R. S. C., Ord. 39, rr. 1 (a), 4; 58, r. 15; 64, r. 7.**—The Court extended the time for appealing where after trial by a Judge and jury the plaintiff was advised that he had three months in which to appeal against the ruling of the Judge, whereas the officials contended that he had only eight days and that his notice was too late.

*BAKER v. FABER*, [1908] W. N. 9—C. A.

**XXIII. COSTS.****(a) Appeal.**

[No paragraphs in this vol. of the Digest.]

**(b) Apportionment.**

[No paragraphs in this vol. of the Digest.]

**(c) Discretion of Judge.**

[No paragraphs in this vol. of the Digest.]

**(d) Documents.**

[No paragraphs in this vol. of the Digest.]

**(e) Independent Proceedings.**

[No paragraphs in this vol. of the Digest.]

**(f) Miscellaneous.**

**46. Costs—Proceedings on Behalf of the Crown.**—There is no jurisdiction to give costs against the Crown unless power to do so is expressly given by statute; and the Court will not allow costs to the Crown in cases in which, if unsuccessful, the Crown would not be liable for costs.

*R. v. GREAT NORTHERN RY.*, [1908] 2 I. R.  
[32—C. A.

**(g) Security for Costs.**

**47. Trustees of Deed of Separation.**—The trustees of a deed of separation suing to enforce a covenant in the deed cannot be ordered to give security for costs.

*WHITE v. BUTT*, 25 T. L. R. 25; 53 Sol. Jo. 12;  
[1908] W. N. 208—C. A.

**(h) Taxation Generally.**

**48. Experts Advising Counsel—Not Giving Evidence—R. S. C., Ord. 65, r. 27 (29).**—In a patent action certain experts were engaged who did not give evidence in the Court of Appeal but gave information to counsel who constantly consulted them during the case. The taxing Master disallowed the fees of these experts, and a summons was taken out to review the taxation.

**HELD**—that the taxing Master was right, that it is unusual to allow the expenses of experts who are not called as witnesses but merely give assistance to counsel, that when unusual expenses are incurred the proper course is to apply to the tribunal for a special order authorising their allowance, and that in the absence of a special order they will be disallowed.

*CONSOLIDATED PNEUMATIC TOOL CO. v. INGER-  
[SOLL SERGEANT DRILL CO.*, 125 L. T. Jo.  
106—Eady, J.

**49. Three Counsel—Experts—Qualifying Fee—Taxing Master's Discretion—R. S. C., Ord. 65, r. 27 (9, 29).**—The costs of three counsel ought not to be allowed except in a case of special complication, and in judging whether there is such complication the Court will take into consideration the length of time the case lasted and other matters. But neither length of time nor scientific evidence is in itself a justification for the employment of three counsel.

A qualifying fee to a witness for the purpose of procuring evidence may be allowed on taxation, even though the witness is not an expert or scientific witness.

*ATTORNEY-GENERAL v. BIRMINGHAM, ETC.*  
[DRAINAGE BOARD, 52 Sol. Jo. 855—Eve, J.

**(i) Trustees and Executors.**

**50. Summons by Trustees—Costs of Unsuccessful Defendants—Costs as Between Solicitor and**

**Costs—Continued.**

*Client*—"Testamentary Expenses."—"Testamentary expenses" directed to be paid out of a particular part of the testatrix's property include the costs of unsuccessful claimants to a legacy made defendants to a summons by trustees for obtaining the direction of the Court as to whom the legacy should be paid.

The costs of unsuccessful claimants to a legacy who are made defendants to a summons by the trustees of the will for obtaining the direction of the Court as to who is entitled to the legacy will be ordered to be paid out of the estate, notwithstanding the objection of the residuary legatee, or other persons entitled to that part of the estate out of which such costs will become payable; and such costs will be ordered to be paid as between solicitor and client.

IN RE CLARKE, CLARKE *v.* ST. MARY'S CON-  
[VALESCENT HOME, 97 L. T. 707—Warring-  
ton, J.

**(k) Two Defendants.**

**51. One Defendant Bankrupt—Judgment Against One Before Trial—Form of Order.**—Where a defendant becomes bankrupt and his trustee is added as a defendant but does not enter an appearance, the trustee will not be made personally liable for costs.

A plaintiff was given costs against two defendants against one of whom judgment had been obtained before trial in default of appearance. The Master was ordered to certify how much of the costs were properly attributable to the defendants jointly and to each separately.

Form of Order.

DANSK, ETC., AKTIESELSKAB *v.* SNELL, [1908]  
[2 Ch. 127; 77 L. J. Ch. 352; 98 L. T. 830;  
24 T. L. R. 395; 15 Manson, 134—Neville, J.

**XXIV. STAY OF PROCEEDINGS.****(a) Actions in Different Courts.**

**51a. Agreement to Refer Disputes to Foreign Court.**—An agreement to refer disputes to a foreign tribunal entitles a defendant to a stay of proceedings in this country unless a case is made out for an injunction.

KIRCHNER & Co. *v.* GRUBAN, 53 Sol. Jo. 151—  
[Eve, J.

**51b. Partnership—Real Property in Colony—Proceedings in Colonial Court—Receiver—Subsequent Proceedings in England—Staying such Proceedings—Rule as to Concurrent Proceedings in England and Colony.**—Four persons were interested as co-partners in mining property in Nova Scotia, where one of them resided as their manager. The other three resided in England. One of the latter, while temporarily resident in Nova Scotia, commenced there a dissolution action in which the other partners all appeared. While such proceedings were in progress, another partner commenced a similar action in the Lancashire Palatine Court. The Vice-Chancellor refused to stay this action, and restrained the plaintiff in the Nova Scotia action from further prosecuting it.

**HELD**—that this injunction should be discharged, and the action in the Palatine Court stayed.

Statement of the principles guiding an English Court where concurrent actions for similar relief are pending here and in a colonial Court.

JOPSON *v.* JAMES, 77 L. J. Ch. 824—C. A.

**(b) Frivolous and Vexatious Actions.**

**52. Admitted Gambling Debt—Right to Rely on Forbearance to Sue as Fresh Consideration.**—To a specially indorsed claim by a bookmaker upon an account stated the defendant pleaded that the debts sued for were gambling debts; the plaintiff admitted this fact in answer to interrogatories, but went on to allege forbearance to sue as a fresh consideration. Upon the defendant's application to dismiss the action as frivolous and vexatious,

**HELD**—that the action must go to trial, for upon the pleadings it was open to the plaintiff to prove that there had been such forbearance to sue at the defendant's request as would amount to fresh consideration, and he must have an opportunity of trying to prove it.

GOODSON *v.* GRIERSON, [1908] 1 K. B. 761;  
[77 L. J. K. B. 507; 98 L. T. 740; 24 T. L. R.  
364—C. A.

**(c) Miscellaneous.**

**53. Abuse of Process of Court—Indian Cause of Action—Defendants Resident in India—Injustice to them.**—A married woman commenced an action in England against her husband and the two other trustees of her marriage settlement claiming an account of moneys due to her thereunder.

She had been married in India, and the trust property was in India, and the three defendants were all practising their professions there. She had left her husband and had been for three years living in France; but was now living in England, and said that she intended to make her home there.

Two of the defendants were served with the writ whilst visiting England.

**HELD**—that the action ought to have been brought in India, and that the proceedings should be stayed.

*Egbert v. Short* ([1907] 2 Ch. 205; 76 L. J. Ch. 520; 97 L. T. 90; 20 T. L. R. 558—Warrington, J.) approved.

IN RE NORTON'S SETTLEMENT, NORTON *v.*  
[NORTON, [1908] 1 Ch. 471; 77 L. J. Ch. 312;  
99 L. T. 257—C. A.

**54. Cross Actions in Respect of Same Matter—Staying Second Action.**—Cross actions for tort having been brought by two persons against each other in respect of the same occurrence, but no pleadings having yet been delivered in either, the Court stayed the second action, leaving the plaintiff therein to his remedy by counterclaim in the other.

EVANS *v.* KEANE, [1908] 2 I. R. 629—K. B. D.

## XXV. MISCELLANEOUS.

**55. Consent Order—Material Fact not Known to Counsel—Order not Passed—Withdrawal of Consent.**—The circumstance that a material fact within the knowledge of the client and his solicitor has not been communicated to counsel at the time when he gives his consent to an order in Court is not a sufficient ground for the client withdrawing his consent to the order before it is passed and entered; and this is so even if counsel states that he would not have given his consent if he had known of the fact.

RE WEDGE, *WEDGE v. PANTER*, 98 L. T. 436; [52 Sol. Jo. 240—Warrington, J.]

**56. Injunction—Committal for Breach of Injunction—Service of Order—Production of Original Order.**

*Semble*, in order to justify a motion to commit a man for contempt in disobeying an injunction it is not necessary to prove that the original order was actually produced to him at the time when a copy of it was served on him.

PETTTIT *v. BELL*, 52 Sol. Jo. 784—Coleridge, J.

**57. Motion to Reinstate Action for Hearing—Absence of Defendant—Retrial of Issues Involving Moral Responsibility Only Without Affecting Legal Liability.**—A case properly heard and tried will not be reinstated for trial where the party applying could have attended at the hearing, and only seeks to clear himself from blame without disputing any legal liability.

WILSON *v. STEVENS*, 52 Sol. Jo. 282—Joyce, J.

**58. Undertaking—Enforcing Undertaking—Corporation—Sequestration—R. S. C., Ord. 42, r. 31.**—Ord. 42, r. 31, of the Rules of the Supreme Court is not intended to alter the practice of the Court as it existed before the promulgation of the rules, and therefore an undertaking is equivalent to an order for the purposes of that rule, and can be enforced against a corporation by sequestration.

MILBURN *v. NEWTON COLLIERY, LD.*, 52 Sol. [Jo. 317—Warrington, J.]

**59. Undertaking to Pay—Breach—Committal—Non-service of Order Containing Undertaking.**—Where a party to an action has given in Court an undertaking to do something on or before a certain day and does not carry out the undertaking, it is not necessary, upon an application to have him committed to prison for contempt, to prove service upon him, either of a copy of the order containing the undertaking, or of the undertaking itself.

RE LAUNDER, *LAUNDER v. RICHARDS*, 98 L. T. [554; [1908] W. N. 49—Warrington, J.]

## PRESCRIPTION.

See EASEMENTS; HIGHWAYS; MINES AND MINERALS; REAL PROPERTY AND CHATELS REAL; WATERS AND WATERCOURSES.

## PRESS AND PRINTING.

See also CONTRACT, No. 2; GAMING AND WAGERING, Nos. 15, 16; DEBIT; PRACTICE AND PROCEDURE; TORTS; TRADE, No. 5.

**1. Newspaper—Claim for Salary in Lieu of Notice—Qualified Notice—"Strictly Confidential."**—This was a claim for salary in lieu of notice in the voluntary winding-up of a company, recently the proprietor of a newspaper, by a journalist who had been employed by the company. He had received one month's notice of termination of his engagement. The notice was headed "Strictly Confidential," and at the same time it was intimated to the claimant and other members of the staff who had received similar notices that the fact of notice having been given was to be kept strictly private, and that negotiations for an increase of capital were pending. They were also asked not to seek employment elsewhere. Shortly afterwards the issue of the newspaper suddenly stopped.

HELD—that the heading "Strictly Confidential" was not binding on the employee, and did not *ipso facto* render the notice void, and that the claim failed.

IN RE "THE TRIBUNE," LD., *Times*, October 21st, [1908—Neville, J.]

**2. Newspaper and Contributor—Indemnity—Joint Tortfeasors—Indemnity to Printers against Libel Actions.**—The plaintiffs published a newspaper for defendants, who agreed to indemnify them against claims in respect of any libellous matter.

An action for libel was brought against both plaintiffs and defendants.

HELD—that the plaintiffs (who paid money to compromise the libel action) could not recover on the indemnity against the defendants, an agreement by one of two joint tortfeasors to indemnify the other in respect of a wrongful act committed by both not being enforceable.

SMITH (W. H.) AND SON *v. CLINTON*, 25 [T. L. R. 34—Coleridge, J.]

**3. Newspaper—"Editor"—Sub-editor—Contributor to Newspaper—Manager of Department—Payment by Space—Nom de Plume—Right to.**—The plaintiff, who contributed to a newspaper a weekly column of literary matter for children under the *nom de plume* of Aunt Naomi:

HELD—that she was entitled to a declaration that she was the owner of the *nom de plume*.

HELD, FURTHER—that the plaintiff's engagement involved the performance of editorial and managerial functions outside the scope of an ordinary contributor, and that she was entitled to reasonable notice, which was agreed to be three months, before the engagement was terminated.

LANDA *v. GREENBERG*, 24 T. L. R. 441; 52 Sol. [Jo. 354—Eve, J.]



## PRESTON COURT OF PLEAS.

*See* COURTS.

## PRESUMPTION AS TO DOCUMENTS AND FACTS.

*See* EVIDENCE ; SALE OF LAND.

## PREVENTION OF CRIMES.

*See* CRIMINAL LAW AND PROCEDURE.

## PREVENTION OF CRUELTY TO CHILDREN.

*See* CRIMINAL LAW AND PROCEDURE.

## PRINCIPAL AND AGENT.

*See* AGENCY.

## PRINCIPALS AND ACCESSORIES.

*See* CRIMINAL LAW AND PROCEDURE.

## PRINCIPAL AND SURETY.

*See* BANKRUPTCY AND INSOLVENCY ;  
BILLS OF EXCHANGE ; GUARANTEE.

## PRISONS AND REFORMATORIES.

[No paragraphs in this vol. of the Digest.]

## PRIVATE BILLS.

1. *Agreement between Parties as to Terms of Private Bill—Extension of Boundaries—Agreement between Councils—Parliamentary Amendments Affecting One Party Only—Liberty to Abandon Clauses—Injunction.*—The defendant corporation agreed, in October, 1907, to extend their boundaries so as to include the urban district of the plaintiff council on certain definite terms. The corporation duly promoted a Bill which contained, besides many other matters, a provision for the inclusion of the

urban district upon the terms agreed upon. When the Bill was before the House of Lords, the Committee of that House inserted a provision for the payment of compensation by the corporation to the Lancashire County Council for loss of rateable value caused by the extension of the city. The provision did not affect the terms of the agreement as between the corporation and the district council. The corporation, however, decided to drop the clauses of the Bill dealing with extension of boundaries. The district council thereupon moved for an injunction to prevent them doing so.

**HELD**—that, as one of the Houses of Parliament was insisting on terms which materially affected a matter which must have been in the contemplation of the parties, either party had a right to retire.

An alteration of the law putting a burden on one of two contracting parties, in the course of carrying out his contract, entitles that party to repudiate the contract if the alteration is made by Parliament *ad hoc*.

LEVENSHULME URBAN DISTRICT COUNCIL *v.*  
[MANCHESTER CORPORATION, 72 J. P. 470—  
Leigh-Clare, V.-C.]

## PRIVATE INTERNATIONAL LAW.

*See* CONFLICT OF LAWS.

## PRIVATE STREET WORKS.

*See* HIGHWAYS ; METROPOLIS.

## PRIVATE WAYS.

*See* EASEMENTS.

## PRIVILEGE.

*See* DISCOVERY ; EVIDENCE ; LIBEL  
AND SLANDER.

## PRIVY COUNCIL.

*See* COURTS ; DEPENDENCIES AND  
COLONIES.

## PRIZE FIGHTING.

*See* CRIMINAL LAW AND PROCEDURE.

## PROBATE DUTY.

*See* DEATH DUTIES.

## PROBATE OF WILLS.

See EXECUTORS AND ADMINISTRATORS.

## PROCESS.

See PRACTICE AND PROCEDURE.

## PROFITS À PRENDRE.

See EASEMENTS AND PROFITS À PRENDRE.

## PROMISSORY NOTE.

See BILLS OF EXCHANGE AND PROMISSORY NOTES.

## PROPERTY TAX.

See INCOME TAX.

## PROSTITUTION.

See CRIMINAL LAW AND PROCEDURE.

## PROVIDENT SOCIETIES.

See INDUSTRIAL AND PROVIDENT SOCIETIES.

## PROXIES.

See COMPANIES.

## PUBLIC AUTHORITIES AND PUBLIC OFFICERS.

COL.

### I. THE PUBLIC AUTHORITIES PROTECTION ACT, 1893.

- (a) Application of Act . . . . . 496
- (b) Costs as between Solicitor and Client . . . . . 497
- [No paragraphs in this vol. of the Digest.]
- (c) Limitation of Actions . . . . . 497

### II. ACTS OF STATE . . . . . 498

[No paragraphs in this vol. of the Digest.]

III. PUBLIC OFFICERS . . . . . 498  
 [No paragraphs in this vol. of the Digest.]  
 And see LOCAL GOVERNMENT; METROPOLIS; PUBLIC HEALTH.

### I. THE PUBLIC AUTHORITIES PROTECTION ACT, 1893.

#### (a) Application of Act.

1. *Action Between Councils to Set Aside an Agreement—Public Authorities Protection Act, 1893* (56 & 57 Vict. c. 61).

HELD—that the provisions of the Public Authorities Act, 1893, had no application to an action in which one local authority sought as against another to set aside an “adjustment” agreement between them on the ground that such agreement had been entered into under a misapprehension as to the law.

HOLSWORTHY URBAN DISTRICT COUNCIL v. [HOLSWORTHY RURAL DISTRICT COUNCIL, [1907] 2 Ch. 62; 76 L. J. Ch. 389; 71 J. P. 330; 97 L. T. 634; 23 T. L. R. 452—Warrington, J.

2. *Action in Rem—Action “Against any Person”—Public Authorities Protection Act, 1893* (56 & 57 Vict. c. 61), s. 1.—An action *in rem* does not fall within sect. 1 of the Public Authorities Protection Act, 1893, and therefore can be commenced after the expiration of six months next after the act, neglect, or default complained of.

*The Longford* ((1889), 14 P. D. 34; 58 L. J. P. 33; 60 L. T. 373; 37 W. R. 372; 6 Asp. M. C. 371—C. A.) followed.

Decision of Deane, J. (23 T. L. R. 258) affirmed.

THE BURNS, [1907] P. 137; 76 L. J. P. 41; 71 [J. P. 193; 96 L. T. 684; 23 T. L. R. 323; 5 L. G. R. 676; 10 Asp. M. C. 424—C. A.

3. *Action of Deceit—Contract—Public Authorities Protection Act, 1893* (56 & 57 Vict. c. 61), s. 1.—The Public Authorities Protection Act, 1893, limiting the time within which an action may be commenced against a public authority, does not apply to an action brought by a contractor where the cause of action alleged is a fraud which induced him to make his contract with the authority.

Decision of C. A. Ir. ([1907] 2 I. R. 82) reversed.

PEARSON v. DUBLIN CORPORATION, [1907] [A. C. 351; [1907] 2 I. R. 537; 77 L. J. P. C. 1; 97 L. T. 645—H. L.

4. *Damage Done to Adjoining Owner in Demolishing Old Premises for Erection of Free Library—Public Authorities Protection Act, 1893* (56 & 57 Vict. c. 61), s. 1.—The council of a metropolitan borough in which the Public Libraries Act, 1892, was in force, in the course of demolishing some old premises for the purpose of erecting a free library made a hole in the wall of the adjoining owner's premises and did damage. In an action for

**The Public Authorities Protection Act, 1893—**  
*Continued.*

damages brought by the adjoining owner subsequent to the expiration of six months after the act complained of, the council pleaded the Public Authorities Protection Act, 1893.

HELD—that the Public Authorities Protection Act, 1893, did not apply.

WALSH v. SOUTHWARK BOROUGH COUNCIL,  
 [72 J. P. 71; 6 L. G. R. 1152—Sutton, J.]

**5. Intended Execution of Statute—Harbour Authority—Shipowner's Action in Respect of Fire on Staith—Staith not Constructed in Exact Conformity with Statute—Costs of Successfully Defending Action—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.]—**A shipowner brought an unsuccessful action against the Tyne Improvement Commissioners in respect of damage done by a fire on one of their staiths.

HELD—that the defendants were entitled to solicitor and client costs; they erected and worked the staith in "intended execution" of statutory powers, and, if in constructing it they had deviated a little from such powers, adjoining owners were the only people entitled to complain, and the plaintiff could not rely on that fact.

THE JOHANNESBURG, [1907] P. 65; 76 L. J. P. [67; 96 L. T. 464; 10 Asp. M. C. 402—Barnes, Pres.]

**(b) Costs as Between Solicitor and Client.**

[No paragraphs in this vol. of the Digest.]

**(c) Limitation of Actions.**

**6. Action for Damages for Negligence Causing Personal Injury—Death of Person Injured—Action by Widow More than Six but Within Twelve Months from Date of Accident—Public Authority Working Tramway Under Statutory Powers.]—**On June 13th, 1906, G. was injured by a tramcar of the defendants; on July 30th, 1906, he issued a writ against them claiming damages for their negligence. He died on February 28th, 1907, from the effect of the injuries, and on April 11th, 1907, his widow brought an action against the defendants on behalf of herself and her children for damages for the death of her husband.

HELD—that as the action was not brought within six months from the date of the accident, it was barred by sect. 1 of the Public Authorities Protection Act, 1893, which applied to the defendants in their capacity of tramway undertakers.

GAWLEY v. BELFAST CORPORATION, [1908] 2 [I. R. 34—C. A.]

**7. "Continuance of Injury or Damage"—Pollution of Stream—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.]—**The plaintiff claimed damages from the defendants on the ground that an effluent from sewage works belonging to them flowed into a stream

and polluted it, with the result that three of the plaintiff's cows died. The three cows died in November, 1906, July, 1907, and September, 1907, respectively. The plaintiff commenced his action on April 22nd, 1908. It was proved or admitted that the pollution of the stream continued down to the time when the action was commenced. Defendants contended that the death of each cow was a distinct cause of action, and that as the plaintiff had not commenced his action till more than six months had elapsed from the death of each cow, the defendants were protected by sect. 1 of the Public Authorities Protection Act, 1893.

HELD—that as the act of the defendants in respect of which the plaintiff sued was the pollution of the stream, which continued down to the time when the action was commenced, the defendants were not protected by the Public Authorities Protection Act, 1893.

HAGUE v. DONCASTER RURAL DISTRICT COUNCIL, 25 T. L. R. 130; 53 Sol. Jo. 135—Div. Ct.

**8. Negotiations—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.]—**The plaintiff, having suffered personal injuries owing to the negligent driving of one of the defendants' servants, claimed compensation from the defendants, and negotiations were entered into with a view to settling the plaintiff's claim. More than six months after the alleged act of negligence, the negotiations having broken down, the plaintiff commenced an action for damages against the defendants. The defendants pleaded the Public Authorities Protection Act, 1893, s. 1. The jury found a verdict for the plaintiff, and also that the defendants had by their conduct induced the plaintiff to delay commencing an action.

HELD—that the defendants were not debarred from setting up in defence the Public Authorities Protection Act, 1893.

HEWLETT v. LONDON COUNTY COUNCIL, 72 J. P. [136; 24 T. L. R. 331—Bray, J.]

**II. ACTS OF STATE.**

[No paragraphs in this vol. of the Digest.]

**III. PUBLIC OFFICERS.**

[No paragraphs in this vol. of the Digest.]

**PUBLIC COMPANY.**

See COMPANIES.

**PUBLIC DOCUMENTS.**

See DISCOVERY; EVIDENCE.



**PUBLIC HEALTH.**

I. HOUSING.	COL.
(a) Common Lodging House . . . . .	499
[No paragraphs in this vol. of the Digest.]	
(b) Housing of Working Classes . . . . .	499
[No paragraphs in this vol. of the Digest.]	
II. MILK, MEAT, AND WATER SUPPLY . . . . .	499
[No paragraphs in this vol. of the Digest.]	
III. VACCINATION . . . . .	499
[No paragraphs in this vol. of the Digest.]	
IV. HOSPITALS AND INFECTIOUS DISEASES . . . . .	499
[No paragraphs in this vol. of the Digest.]	
V. NUISANCE: ABATEMENT AND EXPENSES . . . . .	499
[No paragraphs in this vol. of the Digest.]	
VI. EARTH AND WATER-CLOSETS . . . . .	499
[No paragraphs in this vol. of the Digest.]	
VII. HOURS OF EMPLOYMENT . . . . .	499
VIII. SLAUGHTER-HOUSES . . . . .	500
[No paragraphs in this vol. of the Digest.]	
IX. FIRE BRIGADE . . . . .	500
[No paragraphs in this vol. of the Digest.]	
X. BYE-LAWS . . . . .	500
[No paragraphs in this vol. of the Digest.]	
XI. PRACTICE . . . . .	500
[No paragraphs in this vol. of the Digest.]	
XII. MISCELLANEOUS . . . . .	500
[No paragraphs in this vol. of the Digest.]	

*And see* ANIMALS; ARBITRATION; FACTORIES; FISHERIES; FOOD AND DRUGS; HIGHWAYS; LANDLORD AND TENANT; LOCAL GOVERNMENT; METROPOLIS; NUISANCE; PUBLIC AUTHORITIES; RATES AND RATING; SEWERS AND DRAINS.

I. HOUSING.
(a) Common Lodging House.
[No paragraphs in this vol. of the Digest.]
(b) Housing of Working Classes.
[No paragraphs in this vol. of the Digest.]
II. MILK, MEAT, AND WATER SUPPLY.
[No paragraphs in this vol. of the Digest.]
III. VACCINATION.
[No paragraphs in this vol. of the Digest.]
IV. HOSPITALS AND INFECTIOUS DISEASES.
[No paragraphs in this vol. of the Digest.]
V. NUISANCE: ABATEMENT AND EXPENSES.
[No paragraphs in this vol. of the Digest.]
VI. EARTH AND WATER-CLOSETS.
[No paragraphs in this vol. of the Digest.]
VII. HOURS OF EMPLOYMENT.

1. *Shops—Early Closing—Order of Local Authority—Contents of—“Class” of Shops—Injunction—Shop Hours Act, 1904* (4 Edw. 7, c. 31), ss. 1,

2, 3.]—Where a local authority have duly made an early closing order under the Shop Hours Act, 1904, and such order has been approved by the Home Secretary, the authority are *functi officio*, and cannot be restrained by injunction from enforcing the order.

Such an order may fix a closing hour on one day only in the week.

“Barbers and hairdressers” may be treated as one “class of shop” for the purposes of the Act, though they serve different sections of the public.

ATTORNEY-GENERAL *v.* BRIGHTON CORPORATION, 77 L. J. Ch. 6; 71 J. P. 535; 6 L. G. R. 51; 24 T. L. R. 33—Joyce, J.

Affirmed (77 L. J. Ch. 603; 72 J. P. 306; 99 L. T. 377; 24 T. L. R. 634; 6 L. G. R. 835)—C. A.

VIII. SLAUGHTER-HOUSES.
[No paragraphs in this vol. of the Digest.]
IX. FIRE BRIGADE.
[No paragraphs in this vol. of the Digest.]
X. BYE-LAWS.
[No paragraphs in this vol. of the Digest.]
XI. PRACTICE.
[No paragraphs in this vol. of the Digest.]
XII. MISCELLANEOUS.
[No paragraphs in this vol. of the Digest.]

**PUBLIC LIBRARIES.**

*See* LOCAL GOVERNMENT; RATES.

**PUBLIC MEETINGS.**

*See* CRIMINAL LAW.

**PUBLIC SAFETY AND ORDER.**

*See* EXPLOSIVES; HIGHWAYS; LOCAL GOVERNMENT; METROPOLIS; PUBLIC HEALTH; STREET TRAFFIC; THEATRES, ETC.

**PUBLIC ELEMENTARY SCHOOLS.**

*See* EDUCATION.

**PUBLIC WORSHIP.**

*See* ECCLESIASTICAL LAW.

**PUNISHMENT.**

*See* CRIMINAL LAW.

**QUANTUM MERUIT.**

See AGENCY.

**QUARRIES.**

See MINES, MINERALS, AND QUARRIES.

**QUARTER SESSIONS.**

See CRIMINAL LAW; MAGISTRATES.

**QUEENSLAND.**

See DEPENDENCIES AND COLONIES.

**RACING, RULES OF.**

See AUCTIONS.

**RAILWAYS AND CANALS.****I. RAILWAYS.**

COL.

**(a) Construction.****(i.) Accommodation Works . . . 502**

[No paragraphs in this vol. of the Digest.]

**(ii.) Parliamentary Deposit . . . 502**

[No paragraphs in this vol. of the Digest.]

**(iii.) In General . . . 502****(b) Working and Management.****(i.) In General . . . 502****(ii.) Rates . . . 504****(iii.) Passenger Fares . . . 507**

[No paragraphs in this vol. of the Digest.]

**(iv.) Mails . . . 507**

[No paragraphs in this vol. of the Digest.]

**(v.) Duty towards Passengers . . . 507**

[No paragraphs in this vol. of the Digest.]

**(vi.) Trespass on Railway . . . 507**

[No paragraphs in this vol. of the Digest.]

**(vii.) Locomotives . . . 507**

[No paragraphs in this vol. of the Digest.]

**(viii.) Receivers . . . 507**

[No paragraphs in this vol. of the Digest.]

**II. CANALS . . . 507****III. RAILWAY AND CANAL COMMISSIONERS . . . 508**

[No paragraphs in this vol. of the Digest.]

And see CARRIERS, Nos. 2, 3; COMPULSORY PURCHASE, Nos. 10, 11; HIGHWAYS (BRIDGES); LANDLORD AND TENANT; MASTER AND SERVANT; MINES AND MINERALS; NEGLIGENCE; RATES AND RATING; TELEGRAPHS, No. 2; TRAMWAYS, No. 3.

**I. RAILWAYS.****(a) Construction.**

[No paragraphs in this vol. of the Digest.]

**(i.) Accommodation Works.**

[No paragraphs in this vol. of the Digest.]

**(ii.) Parliamentary Deposits.**

[No paragraphs in this vol. of the Digest.]

**(iii.) In General.**

**1. Compulsory Powers — Expiration of Time Limited for Exercise of—Land Already Acquired by Company—Common Law Right as Owners to Construct Railway Thereon.**—A railway company were authorised to construct a railway, but a section of the special Act provided that if the railway was not completed within five years, then the powers given by the Act to the company for making and completing the railway were to cease.

**HELD**—that this proviso applied only to powers which the company could only exercise by virtue of the Act, and that if the company before the end of the five years had lawfully acquired the right to use the necessary land, and were incorporated for the purpose of making the railway, they could do so even after the expiration of the five years under their common law powers.

*Tiverton and North Devon Ry. Co. v. Loosemore* ([1884] 9 App. Cas. 480; 53 L. J. Ch. 812; 48 J. P. 372; 50 L. T. 637; 32 W. R. 929—H. L.) followed.

**GREAT WESTERN RY. CO. v. MIDLAND RY. [Co., [1908] 2 Ch. 455; 99 L. T. 189—Warrington, J.]**

**Affirmed, [1908] 2 Ch. 644; 77 L. J. Ch. 820.**

**(b) Working and Management.****(i.) In General.**

**2. Detention of Truck—Damages—Jurisdiction of Arbitrator—Action in County Court—Great Western Railway Company (Rates and Charges) Order Confirmation Act, 1891 (54 & 55 Vict. c. cxxii.), s. 6.**—By sect. 6 of the Great Western Railway (Rates and Charges) Order Confirmation Act, 1891, "where merchandise is conveyed in trucks not belonging to the company, the trader shall be entitled to recover from the company a reasonable sum by way of demurrage for any detention of his trucks beyond a reasonable period. . . . Any difference arising under this section shall be determined by an arbitrator. . . ."

A trader brought an action in the county court "for 8s. 8d., damages occasioned by undue detention of his waggon and cost of hire of another waggon in place thereof." The delay took place in sending an empty waggon from one station to another for the purpose of being loaded to fulfil an order. The county court judge held that he had no jurisdiction under sect. 6 to entertain the claim.

**HELD**—that the claim was one for damages "by way of demurrage" within the meaning of sect. 6, and that therefore the jurisdiction of the Court was excluded.

**Railways—Continued.**

Decision of C. A. (sub nom. *R. v. Marylebone County Court Judge, and Great Western Railway Company, Ex parte Phillips*) [1907] 2 K. B. 664; 76 L. J. K. B. 1003; 36 L. T. 802; 23 T. L. R. 541 reversed.

GREAT WESTERN RY. CO. *v.* PHILLIPS & CO., [LD., [1908] A. C. 101; 77 L. J. K. B. 306; 98 L. T. 319; 24 T. L. R. 293—H. L.

**2a. Through Traffic—Exchange Points between Two Companies—Order to Receive Traffic—Company Applying not Actually Owner of Line at Junction—No Exchange Sidings—Running by Consent over Part of Defendants' Line—Consent Withdrawn.**—Although every railway company is *prima facie* bound to receive, forward and deliver traffic duly tendered at any junction on the railway, it does not follow that in the case of every junction an order to do so should be made upon an unwilling railway company. The question of facilities and reasonableness under all the circumstances must be considered. The G. C. railway and the L. and Y. railway were connected at four different exchange points. Of these the junction at A. provided the shortest route for certain through traffic. The communication at A. between the railways was a short length of line belonging to the M. railway company, over which the G. C. company had running powers. At A. itself there were no exchange sidings, but the G. C. company had been running its trains by the consent of the L. and Y. company, over a portion of the latter's line to a spot where there were exchange sidings. The L. and Y. company withdrew this consent. The G. C. company now applied for an order directing the L. and Y. company to receive their traffic at all the exchange points.

**HELD**—that, with regard to the junction at A., the G. C. company were not prevented from relying on a certain section of the L. and Y. Railway Act by the fact that the junction was actually one between the M. company and the L. and Y. company; but that it would be unreasonable to order the L. and Y. company to receive the traffic upon their running line at A. where there were no exchange sidings, and that there was no power to compel them to put in exchange sidings; and that the order to receive traffic must be made in respect of the exchange points other than A., but refused as to A.

GREAT CENTRAL RY. CO. *v.* LANCASHIRE AND [YORKSHIRE RY. CO., *Times*, December 23rd, 1908—Rly. and Can. Com.

**3. Working Agreement—Amalgamation—Time Limit—Ultra vires—Great Northern and Manchester, Sheffield, and Lincolnshire Railway Companies Act, 1858 (21 & 22 Vict. c. cxiii.), ss. 1, 2.**—Sect. 1 of the Great Northern and Manchester, Sheffield, and Lincolnshire Railway Companies Act, 1858, does not authorise the making by the two companies of an agreement for pooling all their income and receipts, nor an agreement for joint working of both the lines as distinct from a working of both lines by one only of the two

companies. Therefore an agreement intended to effect these objects is *ultra vires*.

IN RE GREAT NORTHERN RY. CO. AND THE [GREAT CENTRAL RY. CO., 24 T. L. R. 417; 52 Sol. Jo. 318—Rly. and Can. Com. and C. A.

**(ii.) Rates.**

**4. Apportionment of Through Rates—Part Carriage by Sea—Evidence of Other Agreements.**—Evidence as to the apportionment of through railway rates by agreement cannot be accepted as evidence of custom or usage, and is useless as a guide to the Court when called upon to give a decision *in iuribus*. Division by mileage is not an equitable mode of apportionment when part of the route is by sea, since it is admitted that the cost of carriage by sea is much cheaper than that of land-borne traffic.

In default of suggestions from experts of any better method, the Court adopted the method of apportionment proposed by the railway companies, which was that the receipts should be divided in the proportion of the local rates.

GREAT SOUTHERN AND WESTERN RY. CO. AND [MIDLAND GREAT WESTERN RY. OF IRELAND CO. *v.* CITY OF DUBLIN STEAM PACKET CO., *Times*, July 6th, 1908—Rly. and Can. Com.

**5. Charge for Siding Accommodation—Coal Waggon Remaining on Siding—Services which Company are Not Compellable to Render—Reasonableness—Midland Railway Company (Rates and Charges) Order Confirmation Act, 1891 (54 & 55 Vict. c. ccxix.), s. 4; Sched. Part IV.**—The Midland Railway Company (Rates and Charges) Order Confirmation Act, 1891, provides maximum charges for all services rendered by the company within the scope of their undertaking except in a few cases which are expressly excepted; and the fact that the railway company are not compellable to render the services does not allow them freedom of contract as to the charges for those services. The limitation imposed upon the charges in respect of items in Part IV. of the schedule to the Order is that the charges shall be reasonable, and the question of reasonableness is a question for the ordinary tribunals of the country.

Therefore a charge made by a railway company under Part IV. of the schedule for allowing coal waggons to remain on their wait-order sidings until directions are given by the trader for their disposal must be a reasonable charge, though the company are under no obligation to render the service, and the question of reasonableness is for the ordinary tribunals of the country to determine.

MIDLAND RY. CO. *v.* MYERS, ROSE & CO., [1908] 2 K. B. 356; 77 L. J. K. B. 554; 24 T. L. R. 446—52 Sol. Jo. 377—C. A. Affirmed (99 L. T. 411; 24 T. L. R. 810)—H. L.

**6. Increase—Proof of Reasonableness—Date to be Considered—Railway and Canal Traffic Act, 1894 (57 & 58 Vict. c. 54), s. 1—Particulars—Failure to Give—Admissible Evidence.**—In determining whether an increase of a rate by a



**Railways—Continued.**

railway company since 1892 is reasonable, the point of time to be considered is the time when the increase is made. The reasonableness of the increase must depend upon the circumstances then existing, and the circumstances occurring subsequently are irrelevant considerations. So held by a majority of the Railway and Canal Commission.

**NORTH STAFFORDSHIRE COLLIERY OWNERS' [ASSOCIATION v. NORTH STAFFORDSHIRE RY. CO. AND OTHERS, [1908] 1 K. B. 771; 77 L. J. K. B. 448; 24 T. L. R. 377**

A railway company in 1895 reduced their rates for coal traffic; in 1900 they returned to the original rates.

Upon a complaint as to increase of rates the company were ordered to give particulars of any increase of expense in carrying coal upon which they relied as justification. No particulars were given.

**HELD**—that the company might nevertheless show that the reduction had been granted in consequence of depression in the coal trade, and thus justify a return to the pre-existing rates now that the depression had passed away.

*Ibid.*, [1908] 2 K. B. 765; 77 L. J. K. B. [1021; 24 T. L. R. 780—C. A.

**7. Undue Preference—Inclusive Charges for Collection and Delivery—Rebate to Traders Doing Cartage Services.**—The applicants, who were carriers and carters, complained that the defendant railway company, as cartage competitors, were, within the meaning of sect. 2 of the Railway and Canal Traffic Act, 1854, unduly preferring themselves and unduly prejudicing the applicants by the differences which they made between cartage charges and cartage rebates in respect of goods forwarded by the applicants over the defendants' railway. For several years the applicants had been forwarding over the defendants' railway goods collected from different traders, and they carted the goods to and from the defendants' stations. The goods were generally conveyed by the railway company at C and D class or exceptional rates, which included collection and delivery. As the applicants performed their own cartage services of collection and delivery they thereby became entitled to rebates from the inclusive C and D rates charged by the company in respect of the railway cartage service of which the applicants did not avail themselves. The applicants alleged that the defendants, who were also cartage competitors, did not allow by way of rebate what they really charged and included in the C and D rates of cartage.

**HELD** (Sir James Woodhouse dissenting)—that the applicants had not established any case against the defendants of unduly preferring themselves or of unduly prejudicing the applicants by reason of the insufficiency of the rebates allowed; by Bigham, J., on the ground that the proper measure of the rebate in such cases was the sum which the trader saved the railway company by dispensing with the company's cartage service and doing the cartage service himself, with or

without some measure of profit (if any) which the railway company would have earned if they had done the cartage themselves, and that the applicants had not shown that the rebates allowed were less than the sum so estimated; and by Mr. Gathorne-Hardy on the ground that the true measure of rebate was charge and not cost, and that the applicants had not established that the rebate allowed to them was less than the defendants themselves charged and received for the cartage services.

On appeal: held, that the question was one of fact, and as the Railway Commissioners had not proceeded upon any wrong principle of law the Court of Appeal could not interfere with their decision.

**PICKFORDS, LD. v. LONDON AND NORTH-WESTERN RY. CO., 98 L. T. 170; 23 T. L. R. 535; 24 T. L. R. 149—Rly. and Can. Com. and C. A.**

**8. Undue Preference—Purchase of Line by Railway Company from Trader—Payment in Cash and Services—Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 27.**—In order to establish a case of undue preference the Court must be satisfied that there is something undue, unreasonable, or unfair in the railway company's treatment of the parties under investigation relatively to one another. A mere inequality in charge raises a presumption of undue preference, but that presumption may be rebutted. Inequality of rates may be explained and accounted for by a fair and honest bargain the consideration for which has been duly conveyed to and is enjoyed by the railway company. An agreement of purchase between a railway company and a trader, whereby the latter receives payment, partly in cash and partly in railway services at rates lower than those charged to other persons, must be viewed by the Court with jealousy in order to see that it does not contravene those fundamental principles of equality which should regulate the dealings of a railway company with its customers; but the Court cannot hold as a matter of law that payment for railway services or accommodation must take the form of cash.

**HOLYWELL IRON CO., LD. v. MIDLAND RY. CO., [25 T. L. R. 158.—Rly. and Can. Com.]**

**9. Undue Preference—Mode in which Goods Packed—Tomatoes in Crates and in Baskets—Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 27.**—Application for through rates for tomatoes from the Channel Islands and complaint of undue preference dismissed on the ground that the French tomatoes were packed in crates and were therefore more easily handled, and that the company were prepared to grant the same terms to Channel Island growers if they would pack in crates.

**GUERNSEY MUTUAL TRANSPORT CO., LD. AND [ANOTHER v. LONDON, BRIGHTON, AND SOUTH COAST RY. CO. AND LONDON AND NORTH WESTERN RY. CO., 24 T. L. R. 318—Rly. and Can. Com.]**

**Railways—Continued.**

**10. Undue Preference—Same Rates Charged for Longer Distance—Competition with Other Places—“Interests of the Public”—Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 27, sub-s. 2.]**—The words “interests of the public” in sect. 27, sub-sect. 2, of the Railway and Canal Traffic Act, 1888, include the interests of any considerable portion of the population not being the parties or their servants. Traders complained that the same rates for fish by passenger train were charged between London and Milford, and London and Swansea, although Milford was seventy miles further from London than Swansea and on the same company's line. The company replied that the Milford rates were necessitated by competition with other ports. The complaint was dismissed.

**CASTLE STEAM TRAWLERS, L.D. v. GREAT [WESTERN RY. CO., 24 T. L. R. 317—Rly. and Can. Com.]**

**(iii.) Passenger Fares.**

[No paragraphs in this vol. of the Digest.]

**(iv.) Mails.**

[No paragraphs in this vol. of the Digest.]

**(v.) Duty towards Passengers.**

[No paragraphs in this vol. of the Digest.]

**(vi.) Trespass on Railway.**

[No paragraphs in this vol. of the Digest.]

**(vii.) Locomotives.**

[No paragraphs in this vol. of the Digest.]

**(viii.) Receivers.**

[No paragraphs in this vol. of the Digest.]

**II. CANALS.**

**11. Public Waterway—Statutory Duty to Maintain Water Supply—Abstraction of Water by Railway Company—Prescriptive Claim to Surplus Water—Ultra Vires—Injunction.]**—In 1889 the S. Company were incorporated under a special Act of Parliament, and under the powers of their special Act acquired two existing statutory undertakings formed under prior Acts of Parliament for maintaining and preserving the navigation of the river Dun in Yorkshire as a waterway for the use and benefit of the public. The river Cheswold, near Doncaster, was a branch of the river Dun, and formed part of the said navigation. The defendants owned land adjoining the Cheswold, and about 1879 erected a pumping station on their said land, and by means thereof abstracted and took large quantities of water from the Cheswold to supply their railway station and works at Doncaster, and to supply their locomotives and also the locomotives of other railways having running powers over their line at Doncaster. In 1906 the Attorney-General, at a relation of the S. Company, who were co-plaintiffs, brought an action against the defendants, alleging that the abstraction and use of the said water by the defendants for the purposes aforesaid was in breach of the public rights existing in connection with the said navigation, and constituted a trespass to the property and rights of the S. Company in the said navigation,

and they claimed a declaration that the defendants were not entitled to abstract or take the water so taken by them as aforesaid, and an injunction accordingly. The defendants set up that for twenty years and upwards before action brought they had, without any interruption on the part of the S. Company or any of their predecessors in title, drawn from the Cheswold and enjoyed as of right the use of water, the same being water not required for the purposes of the said navigation, but they stated that they did not assert any right so to abstract or use the water otherwise than subject to the statutory rights and duties of the S. Company; they admitted that they had taken water from the Cheswold for purposes beyond what, as riparian owners, they were entitled to do; and they proved that from 1879 they had continuously taken water from the Cheswold without reference to the requirements of the said navigation.

**HELD**—that it would have been *ultra vires* the S. Company to grant to anyone the right to abstract water from the said navigation, and that, as the user proved by the defendants was unlimited by the requirements of the navigation, the defendants could not limit their claim to a right to use only surface water, *i.e.*, water not required for the said navigation.

**HELD**, therefore—that the plaintiffs were entitled to an injunction to restrain the defendants from taking the water so taken by them as aforesaid, or any water other than in exercise of their rights, if any, as riparian owners.

**ATTORNEY-GENERAL v. GREAT NORTHERN RY. [Co., 72 J. P. 442—Neville, J.]**

On appeal, reversed on other grounds, 126 L. T. Jo. 98.—C. A.

**III. RAILWAY AND CANAL COMMISSIONERS.**

[No paragraphs in this vol. of the Digest.]

**RAPE.**

See CRIMINAL LAW.

**RATES AND RATING.**

	COL.
<b>I. COUNTY RATE.</b>	509
[No paragraphs in this vol. of the Digest.]	
<b>II. DRAINAGE RATE</b>	509
[No paragraphs in this vol. of the Digest.]	
<b>III. GENERAL DISTRICT RATE.</b>	
(a) In General.	509
(b) Exemption.	509
(c) Occupation.	511
(d) Retrospective Rate	511
<b>IV. METROPOLITAN RATING.</b>	511
<b>V. POOR RATE.</b>	
(a) In General.	515
(b) Appeal	515

**Rates and Rating—Continued.**

V. POOR RATE—Continued.	COL.
(c) Assessment . . . . .	516
(d) Distress . . . . .	520
[No paragraphs in this vol. of the Digest.]	
(e) Occupation . . . . .	520
(f) Rateability . . . . .	520
VI. SEWER RATE . . . . .	523
[No paragraphs in this vol. of the Digest.]	
VII. RECTOR'S RATE . . . . .	523

For HIGHWAY RATE: See HIGHWAYS.

For WATER RATE: See WATERWORKS.

See also BANKRUPTCY; LANDLORD AND TENANT; METROPOLIS.

**I. COUNTY RATE.**

[No paragraphs in this vol. of the Digest.]

**II. DRAINAGE RATE.**

[No paragraphs in this vol. of the Digest.]

**III. GENERAL DISTRICT RATE.****(a) In General.**

1. *Summons to Enforce—Amount Reduced—Payment of Amount Found Due—Special Case Stated but Abandoned—Mandamus to Issue Warrant for Full Amount—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211, sub-s. 1 (b), s. 256.*—A district rate was made by the urban district council of B. on the B. and F. Tramway Company, and was demanded in writing, but the company refused to pay. Proceedings were taken before justices to recover the amount of the rate under sect. 256 of the Public Health Act, 1875. The company contended that they were liable to pay on one-fourth part only of the net annual value of the tramroad on the ground that it was a railway within sect. 211, sub-sect. 1 (b), of the above Act, and that a distress warrant should not be granted for the full amount. The justices held that the company had shown sufficient cause for non-payment of the full amount, and they reduced the rate in accordance with the company's contention and made an order for the reduced amount. Subsequently the rating authority having demanded the reduced amount, and having given a receipt for it, obtained from the justices a case stated for the opinion of the High Court, but afterwards withdrew the case stated. A rule *nisi* was then obtained calling upon the justices to show cause why they should not hear and determine an application for the issue of a distress warrant for the full amount of the rate.

HELD—that whether the justices were or were not entitled to make an order for a less amount than that appearing on the face of the rate, the Court would not in the circumstances issue a mandamus to the justices to issue a distress warrant for the full amount.

R. v. SHUTTLEWORTH, EX PARTE TICKLE, 72 [J. P. 329; 6 L. G. R. 1026—Div. Ct.]

**(b) Exemption.**

2. *Partial Exemption—Light Railway—“Land Used Only as Railway”*—“Railway

Constructed Under the Powers of an Act of Parliament”—Wakefield and District Light Railway Order, 1901—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211, sub-s. 1 (b).—The owners of a light railway, constructed under an order of the Light Railways Act, 1896, and laid in the public streets, had, by the terms of the Order, the exclusive use of the railway for carriages with flange wheels, without prejudice to the right of passage by the public over the highway with other carriages. Physically the light railway resembled a tramway.

HELD—that by virtue of the Light Railways Act of 1896, the light railway was a railway to which sect. 211, sub-sect. 1 (b) of the Public Health Act, 1875, applied, and that the owners thereof were occupiers of land used only as a railway constructed under the powers of an Act of Parliament for public conveyance within the section, and were, therefore, assessable to the general district rate in respect of the railway at one-fourth part only of its annual value.

Decision of the C. A. ([1907] 2 K. B. 256; 76 L. J. K. B. 634; 71 J. P. 254; 96 L. T. 622; 23 T. L. R. 404; 5 L. G. R. 595) affirmed.

WAKEFIELD CORPORATION v. WAKEFIELD [AND DISTRICT LIGHT RY. CO., [1908] A. C. 293; 77 L. J. K. B. 692; 72 J. P. 315; 99 L. T. 1; 24 T. L. R. 603; 6 L. G. R. 647; 52 Sol. Jo. 497—H. L.]

3. *Partial Exemption—Pontoons—Floating over Excavated Land—Land Covered with Water—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (b).*—The appellants were rated at £1,700, being the full net annual value of certain “pontoons, dock, land and buildings” occupied by them on the bank of the river Tyne. At all states of the tide the water of the river now flowed under the pontoons, which were used for repairing ships and were kept in position by iron arms working on hinges, but could be detached. The land over which the pontoons floated had been dry land adjoining the appellant's yard, and had been excavated especially to take the pontoons. The pontoons were rated as part of the premises forming the shipbuilding or repairing yard of the appellants or as machinery or appliances attached and ancillary to the use of the yard, and enhancing its value as a rateable hereditament.

HELD—that the pontoons, though not rateable in themselves, enhanced the value of the land beneath them, that such land was occupied by the defendants and was rateable, but that it must be rated as “land covered with water” within the meaning of sect. 211 (1) (b) of the Public Health Act, 1875, at one fourth only of the net annual value.

SMITH'S DOCK CO., LD. v. TYNEMOUTH CORPORATION, [1908] 1 K. B. 315; 77 L. J. K. B. 175; 72 J. P. 64; 24 T. L. R. 127; 6 L. G. R. 223—Div. Ct.]

Affirmed, [1908] 1 K. B. 948; 77 L. J. K. B. 560; 72 J. P. 201; 99 L. T. 136; 24 T. L. R. 432; 52 Sol. Jo. 376; 6 L. G. R. 486—C. A.]



**General District Rate—Continued.****(c) Occupation.**

See Nos. 22, 23, 24, 26, *infra*.

**(d) Retrospective Rate.**

**4. Levy of Rate to Satisfy Outstanding Liability—Legality—Mandamus—Discretion—of Court—Special Expenses Rate—Reasons for not Taking Proceedings Earlier—Mistake of Fact—Negotiations—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 229, 230.]**—By certain agreements entered into in 1900 between an urban authority and a rural authority, the drainage of parts of certain parishes in the rural district was connected with the general drainage system of the urban district, and the rural authority were to pay to the urban authority as yearly rent an amount calculated on the rateable value of all the property within such parishes liable to contribute to the rates for special expenses under the Sanitary Acts. Owing to a mutual mistake the rural authority paid from the outset only an amount calculated on the houses actually draining into the general drainage system. In April, 1905, the urban authority, having discovered the mistake, claimed the balance remaining due from the rural authority for arrears down to September, 1904. Negotiations then ensued, and during the progress of these negotiations a further sum became due from the urban authority in respect of the year September, 1904—1905.

In an action commenced, after part payment and prolonged negotiations, in October, 1906, by the urban authority against the rural authority, claiming judgment against the defendants for the total amount of the arrears, and a *mandamus* commanding them to issue precepts for the levying of rates sufficient to cover the same, Neville, J., gave judgment for the amount claimed, but refused to grant a *mandamus*. On appeal from such refusal:

**HELD**—(1) that the Court had a discretion to grant a *mandamus* to levy a retrospective special expenses rate. *R. v. Leigh Rural District Council*, ([1898] 1 Q. B. 836; 67 L. J. Q. B. 562; 62 J. P. 355; 78 L. T. 604; 46 W. R. 471—C. A.) followed; and (2) that as to the arrears for the year 1904—1905, having regard to the fact that the demand for the increased amount was made during the current year and to the absence of undue delay in prosecuting that demand, the Court ought in its discretion to grant a *mandamus*; but (3) that a *mandamus* ought not to be granted in respect of the earlier arrears.

Decision of Neville, J. ([1908] 1 Ch. 222; 77 L. J. Ch. 138; 72 J. P. 13; 98 L. T. 182; 24 T. L. R. 91; 6 L. G. R. 316) varied.

**CROYDON CORPORATION v. CROYDON RURAL DISTRICT COUNCIL**, [1908] 2 Ch. 321; 77 L. J. Ch. 800; 72 J. P. 369; 99 L. T. 180; 24 T. L. R. 740—C. A.

**IV. METROPOLITAN RATING.**

**5. Rating—Alteration in Value—Railway—Reduction in Receipts—Competition—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67),**

s. 47.]—Where in the course of any year the value of a hereditament has been reduced, and the overseers of the parish have, on the written requisition of a ratepayer under sub-sect. 1 of sect. 47 of the Valuation (Metropolis) Act, 1869, refused to make a provisional list containing the gross and rateable value as so reduced of such hereditament, the assessment committee are bound, under sub-sect. 2 of the same section, on a *prima facie* case of a reduction in value being established, to appoint a person to make such provisional list. Evidence having been given by a railway company of a continual reduction in their receipts in a metropolitan parish owing to the increased competition of tramways, tubes, and motor-omnibuses, and that such reduction in their receipts involved a reduction in the rateable value of their property in the particular parish:

**HELD**—that they had established a *prima facie* case of an alteration in value within sect. 47 of the Valuation (Metropolis) Act, 1869, so as to entitle them to require the assessment committee to appoint a valuer under sub-sect. 2 of that section.

**REX v. SOUTHWARK BOROUGH COUNCIL, EX PARTE SOUTH-EASTERN AND CHATHAM RY. CO.'S COMMITTEE**, 25 T. L. R. 49—Div. Ct.

Affirmed, 25 T. L. R. 144; 53 Sol. Jo. 133—C. A.

**6. Market—Overflow of Market—Tolls—Rateability—Practice—Rating Appeal—Time for Filing Case—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 40—Crown Office Rules, 1906, r. 25.]**—A market included a covered market-place which was practically all let out in stalls, and goods were sold in certain streets near the covered market. In addition to the stallage the owner of the market took from all persons bringing goods into such market limits for sale in the market certain tolls varying in amount according to the nature of the goods so brought in. Such tolls were payable by the seller, whether he held a stall or not, subject to this, that for convenience of collection the owner had agreed with many stall-holders that they should pay him periodically fixed sums in lieu of such tolls or as commuted tolls.

**HELD**—that the tolls were franchise tolls, and that as there was no connection between the occupation of the land or stallage and these tolls, they could not be taken into account in estimating the value of the rateable occupation.

The effect of r. 25 of the Crown Office Rules, 1906, is that a special case stated by Quarter Sessions may be filed at any time within six calendar months from the making of the order or determination of Quarter Sessions, notwithstanding the provision in sect. 40 of the Valuation (Metropolis) Act, 1869, as to the limit of time for moving for a *certiorari*, which is now not required when sessions state a case.

**HORNER v. STEPNEY UNION ASSESSMENT COMMITTEE**, 72 J. P. 262; 98 L. T. 450; 24 T. L. R. 500; 6 L. G. R. 651; [1908] W. N. 101—Div. Ct.

**Metropolitan Rating—Continued.**

**7. Poor Rate—Maximum Rate of Deductions—Flats—Flats Over Shops—Houses or Buildings Let Out in Separate Tenements—Rated Separately—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), Sched. III.]**—A block of buildings let out in separate shops on the ground floor and flats above, each of such shops and flats being separately rated, is a "house or building let out in separate tenements" within the meaning of the footnote to the Third Schedule to the Valuation (Metropolis) Act, 1869.

The rate of deduction from the gross value of each shop or flat so separately rated is therefore to be determined according to the particular facts of each case, and is not subject to the rule as to the maximum rate of deductions.

Decision of Div. Ct. ([1907] 2 K. B. 323; 76 L. J. K. B. 790; 71 J. P. 306; 97 L. T. 215; 5 L. G. R. 666) affirmed.

**WESTERN v. KENSINGTON ASSESSMENT COM- MITTEE**, [1908] 1 K. B. 811; 77 L. J. K. B. 329; 72 J. P. 42; 98 L. T. 688; 6 L. G. R. 119—C. A.

**8. Supplemental General Rate—Validity of Concurrent Rate—Signature of Overseers—"Necessities of the Parish"—Estimate—Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), ss. 14, 20—London Government Act, 1899 (62 & 63 Vict. c. 14), s. 8 (3).]**—On October 1st, 1907, a general rate of 4s. 2d. in the pound, made by the borough council of B. as overseers of the parish of St. M., B., was allowed, the rate being made for the period ending March 31st, 1908.

On November 27th, 1907, after receiving a deputation representing the unemployed, the borough council passed a resolution to the effect that an additional sum of £20,000 should be provided to meet the expenses of repairing roadways and footpaths in the borough, and an additional sum of £5,000 for general purposes, and that it should be referred to the finance committee to make the necessary financial arrangements.

On November 29th, 1907, meetings of the highways and finance committees were held. The highways committee, in a report to the council, recommended the spending, *inter alia*, of £9,000 in connection with the roadways and footpaths of the borough, and the finance committee in their report to the council submitted this sum. The reports did not, however, specify the particular roadways and footpaths which required repair. The reports were accepted by the council, who, in accordance with the recommendation of the finance committee, made a supplemental general rate of 3d. in the pound. This rate was allowed on December 28th, 1907, and was expressed to be made for the period ending March 31st, 1908.

It appeared that, in fact, the roadways and footpaths of the borough of B. were in need of repair, and that the additional sum of £9,000 could well have been spent upon them.

**HELD**—that the borough council had power to make the supplemental general rate by virtue of

Y.D.

the provisions of sects. 14 and 20 of the Poor Rate Assessment and Collection Act, 1869, provided "the necessities of the parish required it"; and that the fact that the rate did not bear the seal of the borough council or the signatures of its members was immaterial;

**BUT HELD**, that there had been no *bona fide* determination on the part of the council as to whether the necessities of the parish did require a supplemental rate, and that no estimate had been submitted by the finance committee to the council in accordance with the provisions of sect. 8 (3) of the London Government Act, 1899, and that, therefore, the rate was bad.

**EVANS AND OTHERS v. BATTERSEA BOROUGH [COUNCIL]**, 72 J. P. 189—Qr. Sess.

**9. Rating of Owners—House Wholly Let Out in Apartments or Lodgings—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 7—Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), ss. 3, 4, 6.]**—The owners of dwelling-houses in boroughs wholly let out in apartments or lodgings not separately rated are liable to be rated under sect. 7 of the Representation of the People Act, 1867; and are not then entitled to the deductions allowed by sects. 3 and 4 of the Poor Rate Assessment and Collection Act, 1869.

The provisions of sects. 3 and 4 of the Poor Rate Assessment and Collection Act, 1869, do not affect the Act of 1867 in any respect.

*Davis v. Wallis* (*infra*) overruled.

**WHITE AND HALES v. ISLINGTON BOROUGH [COUNCIL]**, 25 T. L. R. 121; 53 Sol. Jo. 97—C. A.

**10. Rating of Owners—Dwelling-House let in Apartments or Lodgings not Separately Rated—Rating of Owner instead of Occupier—Deduction Allowable—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 7—Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), ss. 3, 4.]**—The respondent was the owner of six dwelling-houses in the parliamentary and metropolitan borough of Islington, and was rated in pursuance of sect. 7 of the Representation of the People Act, 1867, to the general rate as owner of these six houses, all of which (except one assessed at £32) were of a rateable value of less than £20. The respondent did not occupy any of the houses, but they were wholly let out in apartments or lodgings not separately rated. No allowance, abatement, or deduction was made to the respondent in respect of any of the houses.

**HELD**—that the respondent could not be rated in respect of these houses under sect. 7 of the Representation of the People Act, 1869, without being allowed the deductions provided for by sects. 3 and 4 of the Poor Rate Assessment and Collection Act, 1869.

**DAVIS v. WALLIS**, [1908] 2 K. B. 134; 77 L. J. [K. B. 432; 72 J. P. 165; 98 L. T. 411; 24 T. L. R. 350; 6 L. G. R. 493—Div. Ct.



## V. POOR RATE.

## (a) In General.

See Nos. 8, 9, 10, *supra*.

**11. Precept to Overseers—Borough Council Acting as Overseers—Refusal to Pay—Dispute—Mandamus—Poor Rate Act, 1839 (2 & 3 Vict. c. 84), s. 1—London Government Act, 1899 (62 & 63 Vict. c. 14), s. 11 (1).—**A metropolitan borough council, to whom (as overseers) a precept for poor rate had been issued by the guardians, refused to pay a part of the sum demanded, on the ground that the expenditure challenged ought not to be charged on the rates of one year only. The guardians moved for a *mandamus*.

**HELD**—that although the overseers were a council, the old remedy for non-payment of sums demanded by precept under sect. 1 of the Poor Rate Act, 1839, was available and appropriate, and that therefore no *mandamus* ought to issue.

**R. v. BERMONDSEY BOROUGH COUNCIL, EX PARTE BERMONDSEY GUARDIANS, 72 J. P. 330; 99 L. T. 14; 6 L. G. R. 852—Div. Ct.**

**12. Valuation List—Objection to Assessment Committee—No Power to Raise the Assessment of Objector—Union Assessment Committee Act, 1864 (27 & 28 Vict. c. 39), s. 1.—**When a ratepayer objects before the assessment committee that his premises are assessed at too high a figure, the committee have no power to raise his assessment. If they do so, a rate made on such increased assessment is bad.

**HUDSON v. RHODES, [1908] W. N. 224—Div. Ct.**

## (b) Appeal.

**13. Notice of Objection—Rate made while Objection Undetermined—Appeal Against—No Necessity for New Objection—Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 24—Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1.—**On May 16th, 1900, a valuation list for the parish of Ystradyfodwg was approved by the assessment committee of the Pontypridd Union, and it contained a hereditament belonging to the Rhondda Valley Breweries Company. Supplemental valuation lists were subsequently approved for the parish by the assessment committee at various dates, including December 4th, 1901, October 10th, 1906, and April 10th, 1907. The hereditament in question was specifically referred to in the list approved on December 4th, 1901, but not in any of the other supplemental lists. On November 1st, 1906, a rate was allowed by the justices in accordance with the valuation list then in force, and on November 4th, 1906, notice of the rate being allowed was published. The Rhondda Valley Breweries Company on November 10th, 1906, gave the assessment committee notice of objection to the last deposited valuation list, and the objections were heard on November 30th, 1906. A rate was made on April 15th, 1907, and on May 22nd, 1907, the assessment committee gave their decision upon the above-mentioned objections and confirmed the assessment. The company thereupon, on June 8th,

1907, gave notice of appeal against the rate made on April 15th, 1907. No other notice of objection to the valuation list was given than that above mentioned, and no appeal was entered by the company against the rate made on November 1st, 1906.

The appeal was entered at the Quarter Sessions held on July 2nd, 1907, and was, on the application of the assessment committee, respited to the next sessions.

**HELD**—that the brewery company having given a notice of objection on November 10th, 1906, to the last deposited valuation list, and not having appealed from the rate made on November 1st, 1906, and no decision having been given by the assessment committee before the date of the making of the next rate, viz., April 15th, 1907, they were entitled to appeal against the subsequent rate without having given a fresh notice of objection.

**HELD ALSO**—that the assessment committee having obtained a respite could not afterwards take exception to the company's right to appeal.

**RHONDDA VALLEY BREWERIES CO., LD. v. PONTYPRIDD UNION ASSESSMENT COMMITTEE, 77 L. J. K. B. 816; 72 J. P. 365; 98 L. T. 647; 6 L. G. R. 817—Div. Ct.**

**14. Notice to Assessment Committee—Length of Notice—Less than Twenty-one Days—Right to have Appeal Respited—Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1.—**On an appeal against a rate to the next practicable Quarter Sessions, the appellants are entitled to have the appeal entered and respited if they have given to the assessment committee notice of the appeal less than twenty-one days before the date of sessions, twenty-one days' notice being required by sect. 1 of the Union Assessment Committee Amendment Act, 1864.

**R. v. WEST RIDING JUSTICES, [1908] 2 K. B. [635; 77 L. J. K. B. 914; 72 J. P. 209; 99 L. T. 417; 6 L. G. R. 964—Div. Ct. and C. A.**

## (c) Assessment.

*And see* No. 6, *ante*.

**15. Expense Necessary to Command Rent—Deductions—Rent-charge Imposed for Protection of Lands from Inundation—Rent-charge Affecting Some only of Protected Hereditaments—Parochial Assessment Act, 1836 (6 & 7 Will. 4, c. 96), s. 1.—**By a local Act certain lands in a level under the jurisdiction of Commissioners of Sewers were made subject to annual rent-charges for the purpose of raising the funds necessary for the protection of the lands against incursions of the sea. Other lands in the level which were were also protected by the same works were exempt from any liability to contribute towards the costs of the works.

**HELD**—that the appellant (the tenant) was entitled to a deduction in calculating the rateable value of his premises in respect of the rent charge or such proportion thereof as was the proper share of his premises.

**Decision of C. A. ([1907] 2 K. B. 460; 76**



**Poor Rate—Continued.**

L. J. K. B. 753; 71 J. P. 263; 97 L. T. 413; 5 L. G. R. 892) reversed.

GREEN v. NEWPORT UNION ASSESSMENT COMMITTEE; STEAD v. NEWPORT UNION ASSESSMENT COMMITTEE, 25 T. L. R. 67; 53 Sol. Jo. 60; [1908] W. N. 220—H. L.

**16. Licensed Premises—Deduction of Expenses Necessary to Maintain Hereditaments in State to Command Rent—Charge Imposed as Contribution to Compensation Fund—Licensing Act, 1904** (4 Edw. 7, c. 23), s. 3—*Parochial Assessment Act, 1836* (6 & 7 Will. 4, c. 96), s. 1.][—The probable average annual amount of a charge imposed by Quarter Sessions in respect of an existing renewed on-licence under the Licensing Act, 1904, sect. 3, as a contribution to the compensation fund is not part of the probable average annual cost of the repairs, insurance, and other expenses necessary to maintain the hereditaments in a state to command such rent within the meaning of sect. 1 of the Parochial Assessments Act, 1836, and, therefore, is not to be deducted in estimating the rateable value of the licensed premises for the purposes of the poor rate.

Decision of Div. Ct. ([1906] 2 K. B. 899; 76 L. J. K. B. 16; 71 J. P. 1; 95 L. T. 784; 23 T. L. R. 7; 4 L. G. R. 1155) affirmed.

WADDLE v. SUNDERLAND UNION ASSESSMENT COMMITTEE, [1908] 1 K. B. 642; 77 L. J. K. B. 509; 72 J. P. 99; 98 L. T. 260; 24 T. L. R. 259; 52 Sol. Jo. 223; 6 L. G. R. 415—C. A.

**17. Railway—Duplicated Lines—Whether Directly Productive or Indirectly Productive.**][—A number of lines of rails were used for the purpose of traffic between collieries and the sea. The output of the collieries was regular, but the loading of coal into ships was irregular, and the purpose for which the lines in question were used was the relief of the main running lines by providing lines on which coal waggons going down to, or coming back from, the sea could pass one another so as to proceed in the order in which they were required, and lines on which coal waggons could, if necessary, wait until a ship was ready to receive them. Eighty-five per cent. of the railway company's total gross receipts in the parish were earned by waggons which traversed one or more of the lines in question.

The arbitrator found as a fact that the lines in question were directly productive of profit, and held that they must be assessed with reference to the profits made thereon within the parish, subject to a deduction for the part of the system (wherever situated) which was only indirectly productive.

HELD—that the questions of fact were for the arbitrator, and that on the facts found by him his decision was right.

Decision of Bigham, J. (70 J. P. 534; 95 L. T. 455; 4 L. G. R. 932) affirmed.

TAFF VALE RY. CO. v. CARDIFF UNION ASSESSMENT COMMITTEE, 71 J. P. 529; 97 L. T. 739; 6 L. G. R. 22—C. A.

**18. Railway—Link Line Connecting two Railway Systems—Basis of Assessment—Interest on—Original Cost.**][—A railway line, about eight miles in length, and without any station or sidings on it, connected the appellants' line at Woodford with the Great Western Railway Company's line at Banbury. A length of such line, about one mile 47 chains, was in the Banbury Union. The line was constructed by the appellants under their special Act, and the cost of construction, about £280,000, was, by agreement, advanced to the appellants by the Great Western Railway Company at 3½ per cent. per annum.

HELD—that in assessing the line for poor rate purposes the interest on the cost of construction was not to be taken into account.

Discussion as to the "reasonableness" of the rent which a hypothetical tenant may be supposed to be willing to pay for a short length of line forming part of a railway system.

The amount that a tenant might "reasonably" be expected to give is not to be arrived at by assuming that he already controls all the rest of the line, and is driven by his necessities to pay excessively for the single link line he does not control. Nor is it admissible to say, because no one would give sixpence for an isolated mile of railway, that the rateable value is *nil*. But each section must be regarded as a profit-earning part of the system to which it belongs, each section being indispensable to the working of the system. The resulting inquiry to be made is: how much of the rent that a tenant would give if the whole system were let to him at once is applicable to the particular section to be assessed? That depends on profit-earning, not upon the cost of construction or its annual equivalent, the interest payable on that cost.

Decision of C. A. ([1907] 1 K. B. 717; 76 L. J. K. B. 577; 71 J. P. 157; 96 L. T. 243; 23 T. L. R. 283; 5 L. G. R. 328) reversed.

GREAT CENTRAL RY. CO. v. BANBURY UNION [ASSESSMENT COMMITTEE, 25 T. L. R. 143; [1908] W. N. 250—H. L.

**19. Railway—Parochial Principle—Contributive Value to Rest of Railway System—Prime Cost—Evidence as to—Remoteness.**][—A line from Bletchley to Bedford was constructed by the London and Birmingham Railway Company under an Act of Parliament, and an independent company (the Bedford Railway Company) was formed by the same Act, with a capital of £125,000, which was the estimated cost of making the said line, and it was provided that from and after the completion of the line the London and Birmingham Railway Company should pay to the Bedford Railway Company a rent equal in amount to 4 per cent. on the £125,000. This sum having been expended, and the line being incomplete, the London and Birmingham Railway Company spent a further sum of £240,000 on finishing its construction. The London and Birmingham Railway Company and the Bedford Railway Company were subsequently, with other companies, amalgamated into one company under the name of the London and North Western Railway Company. Various

**Poor Rate—Continued.**

competing lines were subsequently built by other railway companies, and it was admitted that none of those railway companies would have given more for the line than the appellants.

**HELD**—that for the purpose of rating the line from Bletchley to Bedford the rateable value of that portion of the line within the respondents' union ought to be ascertained by taking the receipts and expenses within the union and making the usual allowances, and that the original cost of the line and the benefits it might contribute to other parts of the appellants' system ought not to be taken into account.

Decision of Div. Ct. (70 J. P. 46; 94 L. T. 314; 4 L. G. R. 92) affirmed.

LONDON AND NORTH WESTERN RY. CO. v. [AMPTHILL UNION ASSESSMENT COMMITTEE, 71 J. P. 545; 97 L. T. 869; 6 L. G. R. 64—C. A.]

**20. Railway—Profits Attributable to the Occupation of Portions of the Railway outside the Parish—Evidence—Admissibility.**—In the assessment for rating purposes of a section of railway situate in parish A. the railway company offered to prove that part of the profits of the line in that parish was attributable, not to their occupation of the line in that parish, but to their occupation of the line in parish B., and that in the assessment of their line in parish B. it had been held that profits made outside the parish, including profits in parish A., were attributable to their occupation of the line in parish B., and that the rateable value of the line in the latter parish had been increased accordingly.

**HELD**—that the overseers were bound to admit this evidence, and that in assessing the rateable value of the line in parish A. some deduction ought to be made in respect of any excess sum in respect of which the railway company had been held liable to assessment in parish B. for the occupation of their line in that parish by reason of its earning profits in parish A.

GREAT CENTRAL RY. CO. v. SHEFFIELD UNION [ASSESSMENT COMMITTEE, [1908] 1 K. B. 750; 77 L. J. K. B. 484; 72 J. P. 139; 98 L. T. 543; 6 L. G. R. 377—C. A.]

On appeal, reversed as being inconsistent with the rule laid down in the *Banbury Case* (No. 18), *supra*, [1908] W. N. 250—H. L.

**21. Sewage Farm.**—A sewerage board, for the purpose of carrying out their statutory duties, bought a farm which they converted into a sewage farm, and let to an agricultural tenant who covenanted to dispose of the sewage delivered by the board on to the farm. The rent payable by the tenant was a fair rent for the advantages which he got under the lease, including the manurial value of the sewage, and in these circumstances the Court of Quarter Sessions held that the actual rent was the true basis on which the farm should be rated.

**HELD**—that the rating authority ought to have taken into consideration, beyond the rent payable by the tenant, the annual value of the

facilities afforded to the sewerage board in the discharge of their duties by the user of the farm as a sewage farm.

Decision of C. A. ([1907] 1 K. B. 630; 76 L. J. K. B. 472; 71 J. P. 153; 96 L. T. 315; 23 T. L. R. 251; 5 L. G. R. 306) affirmed.

DAVIES v. SEISDON UNION, [1908] A. C. 315; 77 [L. J. K. B. 742; 72 J. P. 305; 99 L. T. 30; 24 T. L. R. 651; 52 Sol. Jo. 532; 6 L. G. R. 764—H. L.]

**(d) Distress.**

[No paragraphs in this vol. of the Digest.]

**(e) Occupation.**

**22. Empty Building—Intention to Occupy.**—A firm of manufacturers bought an empty building to use in the event of a fire on their premises or any other emergency. They put in a little steel shafting, and workmen's benches fixed to the floor. There was no motive power, and the building could not be used for their business until it was fitted up. Except for the fixtures mentioned, it was empty.

**HELD**—that nevertheless the firm were in occupation and rateable.

BORWICK v. SOUTHWARK CORPORATION, [1908] [W. N. 224—Div. Ct.]

**(f) Rateability.**

**23. Additional Burial Ground—Incumbent of Parish—Whether Occupier—Receipt of Fees—Exemption—Poor Relief Act, 1601 (43 Eliz. c. 2), s. 1—Poor Rate Exemption Act, 1833 (3 & 4 Will. 4, c. 30), s. 1.**—The churchyard of a parish church having been closed in 1854, in 1855 and 1883 two plots of ground, contiguous to one another, and distant about 300 yards from the church, were acquired under the Church Building Acts, and were conveyed to the Ecclesiastical Commissioners as additions to the burial ground of the parish, and to be devoted to ecclesiastical purposes for ever. The plots were consecrated for interments according to the rites of the Church of England. The rector of the parish received a fixed fee for the performance of burials, and charged according to a scale for the purchase of graves and for the erection of monuments. After the payment of all expenses in respect of the burial ground there was a balance of such charges, which the rector retained for his own use.

**HELD**—(1) that the rector was the occupier of the burial ground within the meaning of the Poor Relief Act, 1601, s. 1, and was liable to be rated in respect thereof; and (2) that the burial ground was not exempt from rates under the Poor Rate Exemption Act, 1833.

Decision of Div. Ct. ([1907] 1 K. B. 27; 76 L. J. K. B. 33; 71 J. P. 48; 95 L. T. 796; 23 T. L. R. 35; 5 L. G. R. 7) reversed.

NORTH MANCHESTER OVERSEERS v. WINSTANLEY, [1908] 1 K. B. 835; 77 L. J. K. B. 661; 72 J. P. 172; 98 L. T. 781; 24 T. L. R. 388; 6 L. G. R. 427—C. A.]



**Poor Rate—Continued.**

**24. Docks—Occupation by Harbour Trustees—Harbour Dues—Whether Connected with Occupation of Land—Swansea Harbour Acts, 1854 (17 & 18 Vict. c. cxxvi.), ss. 58, 60, 125, 126, 127; 1874 (37 & 38 Vict. c. civ.), and 1896 (59 & 60 Vict. c. cxli.), ss. 4, 17.]**—Before 1791 the river Tawe came down to Swansea Bay by a channel which included the water area of the present North Dock Basin, the Town Float or North Dock, and the Half Tide Basin. In 1791 the predecessors of the respondents (the Swansea Harbour Trustees) were empowered to deepen the bar by cutting a channel through it, to make stop-gates across the river Tawe, and to convert it into a floating harbour. In 1836 further powers were given to make a navigable cut, to construct locks and weirs near the mouth of the cut, and to make other ancillary work. By the Swansea Harbour Act, 1854, the respondent body was incorporated. By that Act certain powers of charging harbour dues and tonnage rates on vessels and rates on goods were conferred, and it was recited therein that the predecessors of the respondents had constructed piers at the entrance to the harbour, and had converted the bed of the river Tawe into a floating dock, called the Town Float, with two iron swing bridges over the same, and had made a navigable cut and deepened and improved the bed of the river, and made other works in the port or harbour and communicating therewith. Additional works were authorised by the Act. Before 1857 a company called the Swansea Dock Company had, under statutory powers, constructed a dock known as the South Dock, and in 1857 that dock was transferred to the respondents, and is now their property. In 1874 power was obtained to construct another dock and to improve the entrance channel, and in 1896 the respondents were authorised to, and did subsequently, construct a new entrance to the Half Tide Basin at the south end of the Town Float, and they were authorised to levy certain additional rates upon vessels using the Town Float after the construction of the new entrance. The bed of the river was, subject to the provisions and operations of the various Acts, owned by the Duke of Beaufort. It was admitted by the respondents that they were in occupation of certain docks and entrances, but they contended that there was no rateable occupation of the water-covered area of the Town Float and the basins connected therewith.

It was held by the King's Bench Division that, apart from the question of legal ownership of the bed of the river, the respondents had a *de facto* occupation of the Town Float and the basins connected therewith during the whole of the rateable year, and were accordingly rateable in respect of such occupation. That decision was not appealed against.

**HELD**—that the respondents were not the owners of the soil of the harbour as a whole, but only of certain portions thereof, and that certain harbour dues mentioned in the case were not paid to them in respect of and directly connected with the rateable hereditaments in their occupation, and that where a toll or rate is taken

without any distinction as to the occupation of the land used for the carriage of goods, the toll or rate must be treated as a toll or rate in gross wholly unconnected with the occupation of the land, and the occupation of the land by the person entitled to levy the toll or rate must be treated as a mere accident.

**HELD**, therefore, that as the harbour dues were in the nature of tolls in gross, although the occupation by the respondents of dock and wharves largely increased the number of ships entering the harbour, and therefore the harbour dues, yet such occupation of the rateable hereditaments not being necessary to the right to demand such dues, the harbour dues could not be taken into consideration in assessing the rateable value of the land occupied by the respondents.

Decision of C. A. (70 J. P. 305; 94 L. T. 627; 22 T. L. R. 433; 4 L. G. R. 882) affirmed.

**SWANSEA UNION ASSESSMENT COMMITTEE v. [SWANSEA HARBOUR TRUSTEES, 71 J. P. 497; 97 L. T. 585; 5 L. G. R. 1240—H. L.]**

**25. Exemption—Statutory Bargain—Sergeants' Inn—Whether Exempt—Payment of Annual Sum—Dissolution of Society—Rates Imposed by Later Statutes.]**—A private Act of Parliament was passed to carry into effect an agreement between the Society of Judges and Serjeants-at-Law, the then owners of Serjeants' Inn, and the overseers of the parish of St. Dunstan-in-the-West, which agreement provided that the society should pay to the overseers £80 a year to be applied to the relief of the poor, and that this annual sum should be a full discharge of all poor rates and other parochial rates, assessments, or burdens from time to time, and that the Inn and all buildings within the same, and the owners and occupiers, should be exempt from all rates within or for the parish to the utmost extent to which the parties were competent to consent. The society having ceased to exist:—

**HELD** by Barnes, Pres., and Bigham, J. (Vaughan Williams, L. J., dissenting)—that the individual properties of which the Inn was composed were not exempt from poor rates.

**HELD** by the whole Court—that, assuming that there was such an exemption, it did not extend to rates which were raised not for the parish alone but for larger areas, and which were in substance new rates.

Decision of the Div. Ct. (71 J. P. 33; 95 L. T. 787; 23 T. L. R. 13; 5 L. G. R. 147) affirmed.

**JONAS v. OVERSEERS OF ST. DUNSTAN-IN-THE-WEST, 72 J. P. 157; 98 L. T. 691; 24 T. L. R. 358; 6 L. G. R. 557—C. A.]**

**26. Public Park—Land Incapable of Occupation—Power to Sell—Power to Close on Certain Days—Right to Charge for Admission—Liverpool Improvement Acts, 1865, ss. 14, 16; and 1871, s. 52.]**—The corporation bought certain lands from several vendors, and appropriated them for use as a public park under the powers conferred upon them by the Liverpool Improvement Act, 1865, which, by sect. 14, empowered



**Poor Rate—Continued.**

them to purchase and appropriate lands for that purpose, and by sect. 16 authorised them from time to time to sell or lease any part of the lands so acquired, which were not required for the purposes of the Act. The conveyances contained no trusts or other provisions which would have the effect of restricting the purchasers as to the use of the land conveyed. By the Liverpool Improvement and Waterworks Act, 1871, the corporation were empowered to make bye-laws for regulating the days and hours during which the park was to be open or shut, and the prices of admission on any special occasion, provided that the days on which the park should be shut should not exceed seven in any one year. The corporation had on several occasions closed the park to the public and permitted it to be used for a *fête* or fancy fair in aid of a hospital, but had made no charge for admission, though the persons so permitted to use the park had made certain charges for admission. With this exception, the park had never been closed to the public. The average cost of maintaining the park was £3,525 per annum, and the average revenue was £62 10s. per annum.

HELD—that the park was not rateable.

*Lambeth Overseers v. London County Council (The "Brookwell Park Case")* ([1897] A. C. 625; 66 L. J. Q. B. 806; 61 J. P. 580; 76 L. T. 795; 46 W. R. 79—H. L.) applied.

Decision of Div. Ct. (72 J. P. 228; 98 L. T. 420) affirmed.

LIVERPOOL CORPORATION *v.* WEST DERBY  
[UNION ASSESSMENT COMMITTEE, [1908]  
2 K. B. 647; 77 L. J. K. B. 1032; 99 L. T. 435; 72 J. P. 397; 24 T. L. R. 701; 6 L. G. R. 706—C. A.]

**VI. SEWER RATE.**

[No paragraphs in this vol. of the Digest.]

**VII. RECTOR'S RATE.**

**27. Rate in Lieu of Tithes and Other Dues—Non-resident Rector—Validity—Jurisdiction.** By a local Act of 1817, entitled "An Act for making better provision for the support and maintenance of the rector of the parish of St. O. in the town and borough of S., and for providing a more convenient rectory or parsonage house for the said rector," it was provided that thereafter the rector should be paid the annual sum of £600 out of the rates to be raised under the provisions of the Act in lieu of tithes and certain other profits theretofore received by him. The Act also provided for the erection of a suitable rectory-house.

The rectory-house was not now used as such, being let as a counting-house and warehouse; and the rector lived some miles distant from the parish of St. O. The spiritual needs of the parish of St. O. were mostly attended to by the clergy of a neighbouring parish, the time of the rector of the parish of St. O. being occupied with his performing the duties of a diocesan missionary.

Upon an appeal against an order of a Justice

ordering the payment of a certain sum in respect of a rate raised under the above Act of 1817, it was contended that, having regard to the above circumstances, the rate was invalid.

HELD—that it was not within the jurisdiction of the Court of Quarter Sessions to inquire how the rector performed his duties, and that the order of the Justice must be confirmed.

HAYS WHARF, LD. *v.* ST. OLAVE'S TRUSTEES,  
[72 J. P. 499—Qr. Sess.]

**RATIFICATION.**

See AGENCY.

**REAL PROPERTY AND CHATTELS REAL.**

	COL.
I. GENERAL . . . . .	524
II. ESTATES TAIL	
(a) General . . . . .	525
[No paragraphs in this vol. of the Digest.]	
(b) Disentailing . . . . .	525
III. LAND TRANSFER . . . . .	526
IV. MERGER . . . . .	527
[No paragraphs in this vol. of the Digest.]	

See also DESCENT AND DISTRIBUTION;  
DOWER; EXECUTORS; HUSBAND  
AND WIFE, No. 9; LIMITATION OF  
ACTIONS; PERPETUITIES; POWERS;  
SALE OF LAND; SETTLEMENTS;  
TRUSTS; WILLS.

**I. GENERAL.**

**1. Fixtures—Tapestries—Decoration of Room—General Scheme of Decoration—Devise of House—Bequest of Chattels—Rights of Devisee and Legatee.**—The owner of a house decorated the dining-room as a specimen of an Elizabethan room. Pieces of tapestry, nailed upon wooden frames, had been fixed to the walls by the mouldings of a dado and frieze which held the frames and were themselves fastened to the wall by screws. A picture of Queen Elizabeth, attributed to Zucchero, was similarly fixed over the fireplace by the mouldings of an overmantel which had apparently been constructed for the picture. W. bought the house as it stood, including the picture and tapestries. By his will he gave to his wife all the furniture and chattels in the house, and devised the house to trustees upon trust to permit her to reside there during widowhood, and then upon certain trusts:—

HELD—that the picture and tapestry, having been fixed as part of a general scheme of decoration and not for their better enjoyment as chattels, passed under the devise of the house and not under the gift of chattels.

*Leigh v. Taylor* ([1902] A. C. 157; 71 L. J.

**General—Continued.**

Ch. 272; 50 W. R. 623; 86 L. T. 239; 18 T. L. R. 293—H. L.) distinguished.

IN RE WHALEY, WHALEY v. ROEHRICH, [1908]  
[1 Ch. 615; 77 L. J. Ch. 367; 98 L. T. 556—  
Neville, J.]

**2. Mortmain—Lands Sold under Defence Acts, 1842–1873—Purchase of Other Lands—Licence in Mortmain—Mortmain Act, 1888** (51 & 52 Vict. c. 42), s. 1.]—The words “or of a statute for the time being in force” in sect. 1 of the Mortmain Act, 1888, are satisfied by sect. 26 of the Defence Act, 1842, which provides that the purchase-money of lands taken under the latter Act may be laid out in the purchase of other lands to be conveyed to or upon the same uses or trusts as the lands taken stood settled at the time of the payment of such purchase-money. A licence in mortmain is not therefore required when the governors of a hospital, with power to acquire and hold lands in mortmain, wish to purchase land with the money paid to them for other land acquired from them by the Secretary of State for War under the Defence Acts, 1842 to 1873.

IN RE DEFENCE ACTS, 1842 TO 1873; EX PARTE [GOVERNORS OF ST. THOMAS'S HOSPITAL; EX PARTE HIS MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR THE WAR DEPARTMENT, *Times*, October 23rd, 1908—Neville, J.]

**2a. New River Company—“Crown or King's Clog”—Transfer of Undertaking to Water Board—Rent-charge—Liability of Water Board.**—The “Crown or King's Clog,” which was created in 1631 to replace the King's moiety in the New River Company, is a rent-charge which was charged on the fee and to be paid by the company as bailiffs out of the rent of the King's moiety, and not a mere personal covenant or a charge on or interest in a share of profits only and relating merely to partition of net profits. Therefore, since the transfer of the company's undertaking to the Metropolitan Water Board by the Metropolitan Water Act, 1902, which provided that “any rent-charges or other annual payment secured on the undertaking or income” should be secured on the water fund established by that Act, the Metropolitan Water Board is liable to pay the clog, and not the New River Company as reconstituted for the purpose of receiving the purchase price of the undertaking.

ADAIR v. NEW RIVER CO. AND METROPOLITAN [WATER BOARD, *Times*, December 21st, 1908—C. A.]

**II. ESTATES TAIL.****(a) General.**

[No paragraphs in this vol. of the Digest.]

**(b) Disentailing.**

**3. Consent of Protector—Survivor of Three Protectors—Fines and Recoveries Act, 1833** (3 & 4 Will. 4, c. 74), ss. 22, 32.]—The office of protector, created by the Fines and Recoveries Act,

1833, is (subject to any express direction to the contrary in the instrument executing the power) an office which survives to the survivors or survivor of any persons jointly constituted protectors of the settlement, and a power given by the settlement to fill up vacancies so that “the protectorship may be kept up to the original number” is not sufficient to negative the presumption.

**HELD**—that a disentailing assurance executed with the consent of the surviving protector of a settlement was valid, although the settlor appointed three persons protectors and gave express power to appoint successors, if and when any protector died or relinquished his office.

*Bell v. Holtby* (1873), L. R. 15 Eq. 178; 42 L. J. Ch. 266—Malins, V.-C.) approved.

Decision of C. A. ([1908] 1 Ch. 26; 77 L. J. Ch. 1; 98 L. T. 143) affirmed.

COHEN v. BAYLEY-WORTHINGTON, [1908]  
[A. C. 97; 77 L. J. Ch. 363; 98 L. T. 461;  
52 Sol. Jo. 238—H. L.]

**4. Estate Settled by Statute—Coal Duties—Redemption by Annuity—Sale of Annuity for Lump Sum—Power to Lay Out Money in Land to be Held for Same Estates—Power to Bar Entail—Fines and Recoveries Act, 1833** (3 & 4 Will. 4, c. 74), ss. 15, 18.]—Certain duties on coal shipped or sold out of the Tyne were granted by Charles II. by letters patent to the first Duke of Richmond and the heirs of his body; by subsequent statutes the duties were exchanged for an annuity, and the latter sold for a lump sum, which was laid out in the purchase of land to be held to the same persons and for the same estates as the original duties. One of the statutes expressly provided that in default of heirs of the body of the first duke the annuity should revert to the Crown, and in one or more others the Crown's reversion was specially mentioned.

**HELD**—that the coal duties were entailable as being a “tenement” within the statute *de Donis*; that the mere fact that the estate tail was created or governed by an Act of Parliament did not prevent the tenant in tail from barring the entail under sect. 15 of the Fines and Recoveries Act, 1833; that the Duke of Richmond for the time being was “actual tenant in tail” within that section and could bar the entail, and the fact that the Crown's reversion was specially mentioned in some of the Acts did not take away the power to bar that reversion.

ATTORNEY-GENERAL v. DUKE OF RICHMOND [AND OTHERS (No. 2), [1907] 2 K. B. 940; 76 L. J. K. B. 1049; 97 L. T. 791; 22 T. L. R. 742—Bray, J.]

**III. LAND TRANSFER.**

**5. Registered Title—Mortgage by Deed—Contemporaneous Instrument of Charge—Order Foreclosing Mortgage only—Rectification of Register—Land Transfer Act, 1875** (38 & 39 Vict. c. 87), s. 95.]—An owner of a leasehold house at Hampstead mortgaged it by subdemise, and on the same day executed an instrument of charge in favour of the same persons for the

**Land Transfer—Continued.**

same amount. The lenders registered a notice of deposit of the land certificate, but not the charge.

A foreclosure order was made foreclosing only the mortgage by deed.

Form of order rectifying the register approved.

WEYMOUTH *v.* DAVIS, [1908] 2 Ch. 169; 77 [L. J. Ch. 585; 99 L. T. 333—Eady, J.

**IV. MERGER.**

[No paragraphs in this vol. of the Digest.]

**RECEIPT.**

*See* EVIDENCE; REVENUE.

**RECEIVERS.**

COL.

**I. IN PARTNERSHIP PROCEEDINGS . 527**

[No paragraphs in this vol. of the Digest.]

**II. BY WAY OF EQUITABLE EXECUTION . . . . . 527**

[No paragraphs in this vol. of the Digest.]

**III. IN GENERAL . . . . . 527**

*See also* BANKRUPTCY; COMPANIES; COUNTY COURTS, No. 8; EXECUTORS, No. 15; FRIENDLY SOCIETIES, No. 4; HUSBAND AND WIFE, No. 26; LANDLORD AND TENANT, No. 16; LUNATICS; MORTGAGES, No. 9; PRACTICE AND PROCEDURE, No. 25; RAILWAYS AND CANALS.

**I. IN PARTNERSHIP PROCEEDINGS.**

[No paragraphs in this vol. of the Digest.]

**II. EQUITABLE EXECUTION.**

[No paragraphs in this vol. of the Digest.]

**III. IN GENERAL.**

1. *Rights and Duties—Receiver Appointed in Partition Action—Mortgagee Selling by Leave of Court—Purchase by Receiver—Trustee.*—One of four owners of a house was appointed receiver in a partition action: by leave of the Court a mortgagee sold the house under his power of sale and the receiver bought it.

**HELD**—that although the sale did not take place under a decree in the action, she was not at liberty to do so without leave of the Court: that she was entitled to a charge on the house for purchase-money and interest, but subject thereto was a trustee for herself and her co-owners.

*Alven v. Bond* ((1841), Falc. and K. 196, 213, 214) applied.

Decision of Eady, J. [1907] 2 Ch. 293; 76 L. J. Ch. 614; 97 L. T. 279; 23 T. L. R. 660) affirmed.

NUGENT *v.* NUGENT, [1908] 1 Ch. 546; 77 [L. J. Ch. 271; 98 L. T. 354; 24 T. L. R. 296; 52 Sol. Jo. 262—C. A.

**RECEIVING STOLEN GOODS.**

*See* CRIMINAL LAW AND PROCEDURE.

**RECOGNISANCES.**

*See* CRIMINAL LAW AND PROCEDURE; MAGISTRATES.

**RECREATION GROUNDS.**

*See* OPEN SPACES.

**RECTIFICATION OF INSTRUMENTS.**

*See* CONTRACTS.

**REFORMATORIES.**

*See* PRISONS AND REFORMATORIES.

**REGISTRATION OF BIRTHS, MARRIAGES, AND DEATHS.**

*See* HUSBAND AND WIFE; INFANTS; EXECUTORS AND ADMINISTRATORS; POOR LAW.

**REGISTRATION OF LAND.**

*See* CHARITIES; REAL PROPERTY AND CHATTELS REAL.

**REGISTRATION OF VOTERS.**

*See* ELECTIONS.

**RELEASE.**

*See* CONTRACT; REAL PROPERTY; TRUST.

**REMAINDER.**

*See* REAL PROPERTY AND CHATTELS REAL.

**REMOTENESS.**

*See* PERPETUITIES.



**RENT.**

See LANDLORD AND TENANT.

**RENT-CHARGES AND ANNUITIES.**

I. RENT-CHARGES . . . . .	COL. 529
II. ANNUITIES . . . . .	529

And see ECCLESIASTICAL LAW, No. 1;  
HUSBAND AND WIFE, No. 11; LAND-  
LORD AND TENANT; LIMITATION OF  
ACTIONS; REAL PROPERTY, No. 3.

**I. RENT-CHARGES.**

1. *Ireland—Landlord and Tenant—Land Purchase Acts—Rent-charge—Apportionment—Redemption—Indemnity over Other Lands—Land Law (Ireland) Act, 1896* (59 & 60 Vict. c. 47), s. 33 (4).—By sect. 33 (4) of the Land Law (Ireland) Act, 1896, "Where any liability for any annuity, rent-charge, or rent is apportioned and redeemed out of the purchase-money, and a right of indemnity in respect of such liability exists, the person entitled to the purchase-money shall be entitled to the proportion of annuity, rent-charge or rent so redeemed in like manner as if he had purchased the same . . . and the Court . . . shall make provision. . . ."

HELD—that in such a case the person paying the redemption price is entitled to an annuity on the indemnifying lands equal in amount to the portion of the rent redeemed but ranking after the unredeemed portion charged upon the indemnifying lands.

Decision of C.A. (Ir.) *sub nom. In re Thomson's Estate* ([1907] 1 I. R. 311—C. A.) reversed.

DE VESCI (VISCOUNTESS) AND OTHERS *v.* O'CONNELL, [1908] A. C. 298; [1908] 1 I. R. 452; 77 L. J. P. C. 81; 99 L. T. 206; 24 T. L. R. 638—H. L.

**II. ANNUITIES.**

2. *Apportionment of Annuity—Residue—Testator's Liabilities—Covenant to Pay Life Annuity—Capital and Income—Simple Interest.*—A testator had covenanted to pay an annuity to his wife for life. By his will he gave half his residuary estate to trustees upon trust for his daughter for life, if and when she attained twenty-five, with remainders over. Until the daughter attained twenty-five the income was to be added to capital. The daughter had just attained twenty-five. The residue was earning 3 per cent. interest :—

HELD—that each future instalment of the moiety of the annuity payable out of the daughter's share must as it accrued be apportioned between capital and income, as follows, viz. :—Calculate what sum with 3 per cent. simple interest from the day when the daughter attained twenty-one to the day of payment would have

met that particular instalment. Charge such sum to capital and the balance to income.

*In re Bacon* ((1893) 62 L. J. Ch. 445; 68 L. T. 522; 41 W. R. 478—Kekewich, J.) and *In re Henry* ([1907] 1 Ch. 30; 76 L. J. Ch. 74; 95 L. T. 776—Kekewich, J.) not followed.

*In re Harrison* ((1889) 43 Ch. D. 55; 59 L. J. Ch. 169; 61 L. T. 762; 38 W. R. 265—North, J.) followed.

IN RE PERKINS, BROWN *v.* PERKINS, [1907] 2 [Ch. 596; 77 L. J. Ch. 16; 97 L. T. 706—Eady, J.

3. *Apportionment of Annuity—Testator's Residue Settled—Prior Covenant to Pay Thereout Life Annuities.*—Where a testator's estate is liable to pay certain life annuities, and by his will he leaves his estate in trust for life tenants with remainders over, the annuities must be apportioned between income and corpus according to the rule laid down in *In re Perkins* (*supra*). If since his death payments in respect of the annuities have been made out of income, income must be recouped from corpus accordingly, calculations being made at simple interest.

IN RE THOMPSON, THOMPSON *v.* WATKINS, [1908] W. N. 1905—Joyce, J.

4. *Direction to Purchase Annuity—Annuitant's Death—Payment of Sum Required to Purchase Annuity—Interest.*—B. bequeathed to his sister an annuity of £200; he declared that it was to begin at his death, and be payable quarterly, and he directed his executors to purchase a Government annuity in her name. They paid her a quarterly instalment in cash, but she died before they purchased the annuity and before a second payment became due.

HELD—that her representatives were entitled to such sum as would on the day when the first quarter became due and was paid have purchased for her an annuity of £200 paid quarterly with interest at 4 per cent. on such sum from the same date until payment.

IN RE BRUNNING, GAMMON *v.* DALE, [1908] [W. N. 243—Neville, J.

5. *Covenant to Pay—Evidence that Annuitant is Alive—Jurisdiction of Court—R. S. C., Ord. 54A.*—The Court has no jurisdiction under Ord. 54A to make on an originating summons a declaration as to what evidence as to an annuitant being alive ought to be furnished to the person liable to pay the annuity.

HUNT *v.* HUNT, 97 L. T. 822—C. A.

6. *Deed—Construction—Option to Purchase Annuity for Two Lives—Death of One Life.*—Under an indenture between A. and B. for the sale of a business, B. had an option either to pay to A. a certain sum with interest in cash or to purchase an annuity on the life of A. and his wife, or the survivor of them, in some office of repute to be approved by A. A. died before the option was exercised. B. now claimed to exercise the option by purchasing an annuity for the life of A.'s wife. For A.'s representatives it was contended that A.'s approval could

**Annuities—Continued.**

not now be obtained and an annuity could not now be purchased for the joint lives of A. and his wife.

**HELD**—that the option could not now be exercised and that the sum must be paid in cash.

**IN RE PARTINGTON, SEWELL v. ROGERS**, 125 [L. T. Jo. 32—Eady, J.

**7. Gift to a Class—Joint Tenancy or Tenancy in Common—Whether Annuity Perpetual or Not.]**

*Prima facie* an annuity is not perpetual but lasts only during the lifetime of the donee.

*Prima facie* an annuity given to several is a gift of separate annuities for aliquot shares.

E. bequeathed leaseholds (56 years unexpired) on trust to pay out of the annual proceeds the yearly sum of £50 unto and equally between certain persons, and subject thereto in trust for A., with a gift over in case he died before 21.

**HELD**—(1) that the annuity was not perpetual; (2) that on the death of one annuitant his share did not become payable to the others.

*Blight v. Hartnoll* ((1881) 19 Ch. D. 294; 51 L. J. Ch. 162; 45 L. T. 524—*Dictum* of Fry, J.) and *Mansergh v. Campbell* ((1858), 28 L. J. Ch. 61; 3 De G. and J. 232—*Dictum* of Lord Chelmsford) followed.

**RE EVANS, THOMAS v. THOMAS**, 77 L. J. Ch. [583; 99 L. T. 271—Parker, J.

**REPAIRS AND IMPROVEMENTS.**

*See* LANDLORD AND TENANT; SETTLEMENTS.

**REPLEVIN.**

*See* DISTRESS.

**RES JUDICATA.**

*See* ESTOPPEL.

**RESPONDENTIA.**

*See* SHIPPING AND NAVIGATION.

**RESTITUTION OF PROPERTY.**

*See* CRIMINAL LAW AND PROCEDURE; PAWN-BROKER.

**RESTRAINT OF TRADE.**

*See* TRADE AND TRADE UNIONS.

**RESTRAINT ON ALIENATION.**

*See* HUSBAND AND WIFE; TRUSTS.

**RETAINER.**

*See* BARRISTERS; EXECUTORS; SOLICITORS.

**RETURNING OFFICER.**

*See* ELECTIONS.

**REVENUE.**

<b>I EXCISE.</b>	<b>COL.</b>
(a) Carriage Duty . . . . .	532
(b) Dealer in Plate . . . . .	533
[No paragraphs in this vol. of the Digest.]	
(c) Male Servants . . . . .	533
(d) Publican's Licence Duty . . . . .	533
[No paragraphs in this vol. of the Digest.]	
(e) Saccharin . . . . .	534
(f) Spirit Dealers . . . . .	534
[No paragraphs in this vol. of the Digest.]	
(g) Tobacco . . . . .	534
[No paragraphs in this vol. of the Digest.]	
<b>II. IN GENERAL . . . . .</b>	<b>534</b>
[No paragraphs in this vol. of the Digest.]	
<b>III. STAMP DUTIES.</b>	
(a) Bond, Covenant, etc. . . . .	534
[No paragraphs in this vol. of the Digest.]	
(b) Conveyance or Transfer on Sale . . . . .	534
(c) Capital of Companies . . . . .	536
(d) Highway Agreements . . . . .	537
[No paragraphs in this vol. of the Digest.]	
(e) Insurance Policies . . . . .	537
[No paragraphs in this vol. of the Digest.]	
(f) Marketable Security . . . . .	537
(g) Mortgage . . . . .	537
(h) Proprietary Medicines . . . . .	538
[No paragraphs in this vol. of the Digest.]	
(i) Receipt . . . . .	538
(k) Settlement . . . . .	538
[No paragraphs in this vol. of the Digest.]	
(l) Miscellaneous . . . . .	538

*And see* DEATH DUTIES; INCOME TAX; INHABITED HOUSE DUTY; LAND TAX.

**I. EXCISE.****(a) Carriage Duty.**

**1. Exemptions—Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 27—Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4 (3).]**—A cart

**Excise—Continued.**

adapted for use and used solely for farm purposes is exempt from the carriage tax under sect. 4 (3) of the Customs and Inland Revenue Act, 1888, even though used occasionally by the owner for the purpose of driving his farm hands to and from their work.

LATCHFORD *v.* KELSEY, 71 J. P. 225; 96 L. T. [620; 23 T. L. R. 416; 21 Cox, C. C. 410—Div. Ct.

2. *Tramcars on Light Railway—Customs and Inland Revenue Act, 1888* (51 & 52 Vict. c. 8), s. 4.]—A light railway constructed under the Light Railways Act, 1896, is a railway within sect. 4 of the Customs and Inland Revenue Act, 1888, which exempts from the licence duty on carriages any carriage drawn or propelled upon a railway by steam, electricity or other mechanical power.

Wakefield and District Light Ry. Co. *v.* Wakefield Corporation ([1907] 2 K. B. 256; 76 L. J. K. B. 634; 71 J. P. 254; 96 L. T. 622; 23 T. L. R. 404; 5 L. G. R. 595—C. A.) applied.

ATTORNEY-GENERAL *v.* YORKSHIRE (WOOLLEN [DISTRICT] ELECTRIC TRAMWAYS, LD., [1901] 2 K. B. 991; 77 L. J. K. B. 33; 71 J. P. 506; 97 L. T. 343; 23 T. L. R. 712; 5 L. G. R. 1098—Bray, J.

**(b) Dealer in Plate.**

[No paragraphs in this vol. of the Digest.]

**(c) Male Servants.**

3. *Trade Servants—Cooks and Waiters attending on Employees—Revenue Act, 1869* (32 & 33 Vict. c. 14), s. 19 (3)—*Customs and Inland Revenue Act, 1876* (39 & 40 Vict. c. 16), s. 5.]—The appellants, who carried on business as universal providers, had a large number of assistants who did not reside on the premises but were served there daily with breakfast, dinner, tea, and supper. For this purpose the appellants also employed thirty-five men, of whom one was a superintendent, four were cooks, and the rest carried the joints from the kitchen to the table, carried the vegetable and tea-urns and plates, waited on the assistants at table, cleared the table, washed up, laid the table for the next meal, cleaned knives and plates, peeled the potatoes, and carried stock-pots from the stove to the lifts.

HELD—that these thirty-five men did not come within the definition of male servants in sect. 19 (3) of the Revenue Act, 1869, as amended by sect. 5 of the Customs and Inland Revenue Act, 1876, which *prima facie* apply to servants in private establishments, but not to servants employed for trade purposes.

WHITELEY *v.* BURNS, [1908] 1 K. B. 705; 77 L. J. K. B. 467; 72 J. P. 127; 98 L. T. 836; 24 T. L. R. 319; 52 Sol. Jo. 264—Div. Ct.

**(d) Publican's Licence Duty.**

[No paragraphs in this vol. of the Digest.]

**(e) Saccharin.**

4. *"Manufacture" of Saccharin—Elimination of Para Compounds from Saccharin.*]—The chemical process of eliminating para saccharin from 330 saccharin and so producing 550 saccharin is not the "manufacture" of saccharin within the meaning of sect. 9 of the Finance Act, 1901 (1 Edw. 7, c. 7), and sect. 2 of the Revenue Act, 1903 (3 Edw. 7, c. 46), so that the persons carrying on that process need not take out an excise licence.

So held by Darling and Bray, J.J., Ridley, J. dissenting.

McNICHOL AND ANOTHER *v.* PINCH, [1906] 2 K. B. 352; 75 L. J. K. B. 741; 70 J. P. 438; 95 L. T. 530; 22 T. L. R. 654; 21 Cox, C. C. 299—Div. Ct.

**(f) Spirit Dealers.**

[No paragraphs in this vol. of the Digest.]

**(g) Tobacco.**

[No paragraphs in this vol. of the Digest.]

**II. IN GENERAL.**

[No paragraphs in this vol. of the Digest.]

**III. STAMP DUTIES.****(a) Bond, Covenant, etc.**

[No paragraphs in this vol. of the Digest.]

**(b) Conveyance or Transfer on Sale.**

5. *Conveyance Executed Abroad—Transfer Abroad to New Company—Payment by Issue in England of Shares in Company—Company Registered in England—"Property Situate"—"Thing done or to be done" in United Kingdom—Stamp Act, 1891* (54 & 55 Vict. c. 39), s. 1; s. 14, sub-s. 4; s. 54; Sched., "Conveyance on Sale."]—A company, which was registered in England, and which had a branch business in France, by an instrument in writing executed in France and drawn up in French transferred to a new company, also registered in England, all its business and assets in France, and in consideration thereof the new company issued and allotted to the old company in England certain shares in the new company.

HELD—that the instrument was a "conveyance on sale" within the meaning of sect. 54 of the Stamp Act, 1891, and required to be stamped accordingly.

Decision of C. A. ([1906] 2 K. B. 834; 22 T. L. R. 829) reversed.

INLAND REVENUE COMMISSIONERS *v.* MAPLE & [CO. (PARIS), LD., [1908] A. C. 22; 77 L. J. K. B. 55; 97 L. T. 814; 24 T. L. R. 140; 14 Manson, 302—H. L.

6. *Conveyance on Sale—Property Purchased under Compulsory Powers—Necessity of Producing Stamped Conveyances—"Production"—"Completion of Purchase"—Finance Act, 1895* (58 & 59 Vict. c. 16), s. 12.]—Sect. 12 of the Finance Act, 1895, is not limited to the case of a statutory confirmation of a provisional agreement to purchase, but applies to a purchase of



**Stamp Duties—Continued.**

property by a railway company in pursuance of compulsory powers contained in a special Act of the company.

A conveyance which has been produced at the collector's office in order to be provisionally marked with the duty payable, and has thereafter been stamped with that duty, has not thereby been "produced to the Commissioners of Inland Revenue duly stamped" in the sense of sect. 12.

The date of the "completion of the purchase" for the purpose of sect. 12 is the date of the final payment of the price.

LORD ADVOCATE *v.* CALEDONIAN RY. CO., [1908] S. C. 566—Ct. of Sess.

7. *Conveyance on Sale—Verbal Agreement followed by Giving of Possession—Later Written Agreement—Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 13, 54, 59.*—On June 13th, 1904, M. verbally agreed to sell an ice-cream business to F. for £150, and F. thereupon entered into possession of the shop and business. M. having begun another ice-cream business in the same town, F. sued for damages on the ground that he had, as part of the agreement, undertaken not to compete with him in business in the same town. M. produced a document, dated August 26th, 1904, signed by the parties, which he alleged set forth the terms of the agreement. This document bore a sixpenny agreement stamp. F. pleaded that the document, being a conveyance on sale within sect. 54 of the Stamp Act, 1891, required an *ad valorem* stamp.

HELD—that having regard to the fact that there was a prior verbal agreement to sell, followed by possession, the document was not so clearly a conveyance on sale as to make it the duty of the Court under sect. 14 of the Stamp Act, 1891, to require the document to be stamped with an *ad valorem* stamp before allowing it to be admitted in evidence.

DON FRANCESCO *v.* DE MEO, [1908] S. C. 7—Ct. of Sess.

8. *Dissolution of Old Company—Vesting of Property in New Company—Statutory Transfer—Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 1, 6; Sched.—Finance Act, 1895 (58 & 59 Vict. c. 16), s. 12.*—A private Act provided that a gas company should be dissolved and reincorporated with further powers; that its property should vest in the new company, who should assume all its liabilities; and that the stockholders should receive the same amount of stock in the new company.

HELD—that the copy of the Act was chargeable with *ad valorem* duty, as a "conveyance on sale," on the amount of the liabilities assumed by the new company and the value of the stock issued by it to stockholders in the old company, such value to be ascertained as on the day of the passing of the Act.

ATTORNEY-GENERAL *v.* FELIXSTOWE GAS [LIGHT CO., [1907] 2 K. B. 984; 76 L. J. K. B. 1107; 97 L. T. 340; 14 Manson, 291—Bray, J.]

**(c) Capital of Companies.**

9. *Increase of Nominal Share Capital—Unissued Capital of Company—Transfer of Undertaking of Company to another Company—Increase of Nominal Share Capital of New Company—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 113.*

HELD—that there was an increase of the amount of nominal share capital of a railway company within the meaning of sect. 113 of the Stamp Act, 1891, where the company took over the undertaking and powers of another railway company which had power to issue but had not issued a specified amount of nominal share capital upon which stamp duty under sect. 113 of the Act had already been paid.

GREAT NORTHERN, PICCADILLY, AND BROMPTON RY. CO. *v.* ATTORNEY-GENERAL, 98 L. T. 731; 24 T. L. R. 506; 52 Sol. Jo. 411—H. L.

10. *Issue of Loan Capital—Existing Debenture Stock—Amalgamation—Rights of Holders of Existing Stock Modified and Altered—Liability of Issue of New Stock to Duty.*—A company, incorporated by special Act, had from time to time issued certain debenture stock, bearing interest at 4 per cent. By an amalgamation Act, which provided for a change of the name of the company, for the dissolution of the company, and the transfer of its undertaking to the new company, it was provided that on and from the date of the amalgamation the then existing debenture stock was to be divided into debenture stock of two classes, the A and B debenture stock, each bearing interest at 3 per cent., and the amount of the A and B debenture stock was to be 61 per cent. and 39 per cent. respectively of the total amount of the then existing debenture stock. The rights of each holder of existing debenture stock were to be modified so that his holding was to consist of 61 per cent. of A debenture stock and 39 per cent. of B debenture stock, bearing interest at 3 per cent., and each holder was to be entitled to a further amount of B debenture stock equal to one-third of the amount of existing debenture stock held by him. There was no provision in the Act that the existing debenture stock was to be cancelled or extinguished, but each holder of existing stock was to deliver up the certificates of the stock held by him and was to receive proper certificates in exchange, and he was to be no longer entitled to register the existing stock. The operation carried out under the Act did not involve the raising or obtaining from the public any additional capital.

HELD—that under the operation carried out by the amalgamation Act the issue of the A and B debenture stock was an "issue of loan capital" within the meaning of sect. 8, sub-sect. 1, of the Finance Act, 1899, and that the company were bound, under sub-sect. 2, to deliver a duly stamped statement of the total aggregate of such A and B debenture stock.

Decision of Walton, J. (95 L. T. 536) and C. A. (98 L. T. 655) affirmed.

ATTORNEY-GENERAL *v.* LONDON AND INDIA [DOCKS CO., 99 L. T. 2—H. L.]

**Stamp Duties—Continued.****(d) Highway Agreements.**

[No paragraphs in this vol. of the Digest.]

**(e) Insurance Policies.**

[No paragraphs in this vol. of the Digest.]

**(f) Marketable Security.**

11. "*Promissory Note*" — "*Debenture*" — *Treasury Note of Foreign Government*—*Stamp Act*, 1891 (54 & 55 Vict. c. 39), ss. 33, 82 (1) (b), 122; *Sched. 1.*]—An instrument, called a four-and-a-half per cent. gold coupon Treasury note, issued by the United States of Mexico, contained a promise by the States to pay to the bearer at a certain date \$1,000 in gold, and also interest in gold at the rate of  $4\frac{1}{2}$  per cent. per annum upon surrender of the annexed coupons; and the note was redeemable at par at the option of the United States at any time before maturity on 60 days' notice.

HELD—that the instrument, though a "promissory note," was also a "marketable security" within the meaning of sects. 89, 122, of the Stamp Act, 1891, and must be stamped as such.

Decision of C. A. ([1907] 1 K. B. 246; 76 L. J. K. B. 186; 96 L. T. 70; 23 T. L. R. 145) affirmed.

SPeyer Bros. v. COMMISSIONERS OF INLAND [REVENUE, [1908] A. C. 92; 77 L. J. K. B. 302; 98 L. T. 286; 24 T. L. R. 257; 52 Sol. Jo. 222—H. L.

**(g) Mortgage.**

12. *Security for Payment of Money—Debenture Trust Deed*—"Security for Money or Stock without Limit"—*Duty of Commissioners to Assess—Principal or Primary Security—Collateral, Auxiliary, or Additional Security—Moneys Expended in Preserving the Premises*—*Stamp Act*, 1891 (54 & 55 Vict. c. 39), ss. 12 (1) (6) (b), 88; *Sched. 1.*, "*Mortgage, Bond, Debenture, Covenant*"—*Revenue Act*, 1903 (3 Edw. 7, c. 46), s. 7.]—By an indenture of May 28th, 1897, which recited that an agreement had been made for the sale of certain freehold and leasehold property to a company, the vendors by direction of the company conveyed the property to the trustees of a deed of May 20th, 1897, for holders of debenture stock in the company, and the indenture provided that the trustees should stand possessed of the property upon the trusts and subject to the powers and provisions contained in the deed of May 20th. By the deed of May 20th, which was made between the company and the trustees, the company covenanted to cause the property in question to be conveyed to the trustees for securing payment by the company of the debenture stock and the dividends thereon; and the deed contained a provision in clause 33 that if default should be made in keeping the mortgaged premises in a good state of repair and working condition, and so insured as in the indenture specified, the trustees might from time to time repair or renew, or insure (as the case might require), the mortgaged premises or any part thereof, and the company would on demand

repay to the trustees every sum of money expended by them for the above purposes, with interest at the rate of 5 per cent. per annum from the time of the same having been expended, and until such repayment the same should be a charge upon the mortgaged premises. This latter deed was stamped with duty at 2s. 6d. per cent. as the principal security for the payment of the money secured by the debentures. The indenture of May 28th was presented to the Commissioners of Inland Revenue for assessment of duty on it, but they refused to assess the duty, upon the ground that clause 33 of the deed of May 20th was one of the powers and provisions referred to in the indenture of May 28th, subject to which it was agreed that the trustees should stand possessed of the property, and consequently that the indenture was an instrument made as a security for money or stock without limit within the meaning of sect. 12, sub-sect. 6 (b), of the Stamp Act, 1891. Alternatively, they assessed the duty at 10s. per cent. upon the purchase-money, and 6d. per cent. as a collateral, auxiliary, or additional security for the repayment of the money secured by the debentures. No question was raised as to the 10s. per cent.

HELD—that the amount which might be paid by the trustees under clause 30 of the deed of May 20th, was not money lent, advanced or paid within sect. 88 of the Stamp Act, 1891, and that therefore the deed of May 28th was not a security for an unlimited amount, and the Commissioners were bound to assess the duty.

HELD ALSO—that the duty of 6d. per cent. was correct, and that sect. 7 of the Revenue Act, 1903, which limited the duty to a maximum of 10s. was not retrospective, and therefore did not apply.

LORD SUFFIELD v. THE COMMISSIONERS OF [INLAND REVENUE, [1908] 1 K. B. 865; 77 L. J. K. B. 746; 98 L. T. 405; 24 T. L. R. 371; 15 Manson, 233—Bray, J.

**(h) Proprietary Medicines.**

[No paragraphs in this vol. of the Digest.]

**(i) Receipt.**

13. *Stamped Receipt for Two Sums—Contemporaneous Receipt for One of such Sums.*]—The defendant gave to N. a duly stamped receipt for a sum paid by N. for rent and goods supplied, and at the same time gave N. (for bookkeeping purposes) a separate document purporting to be a receipt for the rent alone, which exceeded 2l.

HELD—that the latter document did not require a stamp.

ATTORNEY-GENERAL v. ROSS, [1908] 2 I. R. [403—K. B. D.

**(k) Settlement.**

[No paragraphs in this vol. of the Digest.]

**(l) Miscellaneous.**

14. *Promissory Note—Payable at Sight*—*Stamp Act*, 1891 (54 & 55 Vict. c. 39), ss. 32, 33; *Sched. 1.*]—The stamp required on a promissory

**Stamp Duties—Continued.**

note, whether payable at sight or on demand or otherwise, is an *ad valorem* one.

OETTINGER *v.* COHN, [1908] 1 K. B. 582; 77 [L. J. K. B. 299; 98 L. T. 678; 24 T. L. R. 252—Channell, J.

**REVERSIONS AND REMAINDERS.**

See PERSONAL PROPERTY; REAL PROPERTY AND CHATTELS REAL.

**REVERSIONS, ASSIGNMENT OF.**

See PERSONAL PROPERTY.

**REVISING BARRISTER.**

See ELECTIONS.

**REVOCATION.**

See WILLS.

**REWARD.**

See CONTRACTS; CRIMINAL LAW.

**RIGHT OF WAY, etc.**

See EASEMENTS; HIGHWAYS.

**RIOT.**

See CRIMINAL LAW AND PROCEDURE; DAMAGES.

**RIPARIAN OWNERS AND RIGHTS.**

See FISHERIES; WATERS AND WATERCOURSES.

**RIVERS.**

See WATERS AND WATERCOURSES.

**ROADS.**

See HIGHWAYS, STREETS AND BRIDGES.

**ROBBERY.**

See CRIMINAL LAW AND PROCEDURE.

**ROYAL FORCES.**

And see COURTS; DEPENDENCIES AND COLONIES; ELECTIONS; PUBLIC AUTHORITIES; RATES.

1. *Martial Law—Court-Martial in Colony—Sentence—Appeal to Privy Council—Sentence Confirmed by Colonial Statute—Application for Special Leave to Appeal.*—The Judicial Committee cannot entertain an appeal from a sentence passed by a court-martial in a district in a colony where martial law was proclaimed when an Act of the colonial Legislature has been passed making lawful the sentences passed by the courts-martial.

TILONKO *v.* ATTORNEY-GENERAL OF NATAL [P. C.], [1907] A. C. 93; 76 L. J. P. C. 29; 95 L. T. 853; 23 T. L. R. 21—P. C.

At a later date, the Supreme Court of Natal having refused an application by the same petitioner for a writ of *habeas corpus*, the Judicial Committee declined to give leave to appeal therefrom. [1907] A. C. 461; 76 L. J. P. C. 105; 97 L. T. 613; 23 T. L. R. 668—P. C.

2. *Volunteers—Contract by Commanding Officer—Uniforms and Goods Supplied for Use of Corps—Personal Liability.*—Where uniforms or other goods are ordered by or on the authority of the commanding officer of a volunteer corps, he is, by virtue of sect. 25 of the Volunteer Act, 1863, and Regulation 407 of the regulations made under that Act, personally liable for the price of the uniforms and goods supplied under those orders; and if he dies before they have been paid for his personal representatives are liable, although the property in the goods has passed to his successors in command.

SAMUEL BROTHERS, LD. *v.* WHETHERLY, [1907] 1 K. B. 709; 76 L. J. K. B. 357; 96 L. T. 552; 23 T. L. R. 280—Walton, J.

Affirmed, as being purely a question of fact, [1908] 1 K. B. 184; 77 L. J. K. B. 69; 98 L. T. 169; 24 T. L. R. 160—C. A.

**SALE OF GOODS AND PERSONAL PROPERTY.**

COL.

I. ACCEPTANCE . . . . . 541  
[No paragraphs in this vol. of the Digest.]

II. CONDITIONS . . . . . 541



**Sale of Goods and Personal Property—Continued.**

	COL.
III. CONSTRUCTION . . . . .	542
IV. DAMAGES . . . . .	543
[No paragraphs in this vol. of the Digest.]	
V. FORMATION OF CONTRACT . . . . .	543
[No paragraphs in this vol. of the Digest.]	
VI. MISCELLANEOUS . . . . .	543
VII. NOTE OR MEMORANDUM . . . . .	543
[No paragraphs in this vol. of the Digest.]	
VIII. PART PAYMENT . . . . .	543
[No paragraphs in this vol. of the Digest.]	
IX. PASSING OF PROPERTY IN GOODS	543
X. PASSING OF TITLE TO GOODS . . . . .	544
[No paragraphs in this vol. of the Digest.]	
XI. SALE OF BUSINESS . . . . .	544
[No paragraphs in this vol. of the Digest.]	
XII. SALE BY SAMPLE . . . . .	544
XIII. STOPPAGE IN TRANSITU . . . . .	544
XIV. WARRANTY . . . . .	545

And see AGENCY; ARBITRATION, No. 1;  
AUCTIONS; PATENTS, No. 2.

**I. ACCEPTANCE.**

[No paragraphs in this vol. of the Digest.]

**II. CONDITIONS.**

See also PATENTS, No. 2.

1. *Conditions as to Re-sale—Purchaser not to Sell to Persons on Suspended List—Purchase by Retailer from Wholesale Dealer—Inducing Dealers to Break Agreements—Interference with Contractual Relationships—Contract with Manufacturer.*—The plaintiffs required all wholesale and retail dealers to whom they sold their goods to sign an agreement, one of the terms of which was that they must not resell to any dealer who had not signed an agreement with the plaintiffs, nor to any dealer who was on the plaintiffs' "suspended list." One E. purchased the plaintiffs' goods from a wholesale dealer, and the latter required him to sign a document stating that in consideration of the sale by the wholesale dealer to him of the plaintiffs' goods at current retail dealers' discounts he agreed with the plaintiffs to conform with and adhere to and be bound by their price lists and conditions of sale. One of the conditions of sale was that retail dealers were not to sell the goods to dealers who were on the plaintiffs' suspended list. E. sold at trade discount prices the goods so purchased by him to the agent of the defendants, who were on the suspended list, thinking that the defendants were entitled to have them. It was not proved that the defendants or their agent incited or procured E. to violate his contract (if any) with the plaintiffs. The conduct of the defendants was not malicious, nor was their motive to injure the plaintiffs. The plaintiffs brought an action against the defendants for an injunction to restrain them from inciting persons who had entered into retail dealers' agreements with the plaintiffs from selling the plaintiffs' goods in breach of those agreements.

HELD—that in the circumstances the action was not maintainable.

By agreement between the plaintiffs and certain factors the latter agreed not to sell the plaintiffs' goods to any dealer who had not signed the agreement set out above or who was on the suspended list. Two persons on behalf of the defendants, who were on the suspended list, bought the plaintiffs' goods from certain factors, those two persons untruly representing that they were independent dealers. In an action for an injunction and damages:—

HELD—that the action would lie, as the defendants had by intentional misrepresentation incited or procured the factors to break their agreements with the plaintiffs.

Decision of Joyce, J. (76 L. J. Ch. 194; 96 L. T. 218; 23 T. L. R. 189) affirmed in part and reversed in part.

NATIONAL PHONOGRAPH CO., LD. v. EDISON-BELL CONSOLIDATED PHONOGRAPH CO., LD., [1908] 1 Ch. 335; 77 L. J. Ch. 218; 98 L. T. 291; 24 T. L. R. 201—C. A.

**III. CONSTRUCTION.**

2. *Sale of Cattle on c.i.f. Terms—Insurance to be Against "All Risks"—Policy with Clause "Warranted Free of Capture, Seizure, and Detention"—Cattle not Landed in Consequence of Government Prohibition—Loss.*—The plaintiffs purchased cattle from the defendant on c.i.f. terms, the terms as to insurance in the contract being that it was to be "against all risks." The defendant delivered to the plaintiffs a policy commonly known as an "all risks" policy, but which (as is usual in such policies) contained the clause "warranted free of capture, seizure, and detention, and the consequences thereof."

HELD—that the policy containing that clause (although as between an insurance broker and underwriters its insertion was usual in an "all risks" policy) did not comply with the terms of the contract of sale, and therefore that the defendant was liable for loss occurring to the plaintiffs by reason of the cattle not being allowed to be landed and having to be slaughtered owing to a Government prohibition.

Decision of Channell, J. ([1907] 1 K. B. 685; 76 L. J. K. B. 469; 96 L. T. 842; 23 T. L. R. 247; 12 Com. Cas. 196; 10 Asp. M. C. 453) affirmed.

YUILL & CO. v. SCOTT-ROBSON, [1908] 1 K. B. [270; 77 L. J. K. B. 259; 98 L. T. 364; 24 T. L. R. 180; 13 Com. Cas. 166; 52 Sol. Jo. 192—C. A.

3. *Interest in Land—Slag to be Severed and Removed by Purchaser—Breach of Contract—Defect in Vendor's Title—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 51, 62.*—The lessee of land agreed in writing to sell to K. & Co. at a fixed price per ton as much of the slag and cinders forming part of the land in question as they liked to remove, and agreed to give them free access. His lessors interfered and barred the access.

HELD—that R. & Co. could not recover damages against the lessee for loss of their

**Construction—Continued.**

bargain, because the contract was one for the sale of an interest in land, and the lessee was only prevented from performing his part of the contract by a defect in his own title.

*Bain v. Fothergill* ((1874), L. R. 7 H. L. 158; 43 L. J. Ex. 243; 31 L. T. 387—H. L.) followed and applied.

*MORGAN v. RUSSELL & Co.*, 25 T. L. R. 120; [53 Sol. Jo. 136; [1908] W. N. 245—Div. Ct.

**IV. DAMAGES.**

[No paragraphs in this vol. of the Digest.]

**V. FORMATION OF CONTRACT.**

[No paragraphs in this vol. of the Digest.]

**VI. MISCELLANEOUS.**

**4. Cargo Lost at Sea—Sellers of Cargo not Paid at Time of Loss—Subsequent Payment by Buyers—Buyers Paid Amount of Insurance—Right of Sellers to Sue Ship—Right of Underwriters to Recover in Sellers' Name—Subrogation.**—Goods were sold by merchants abroad to merchants in England in pursuance of a c.i.f. contract, and the sellers sent the shipping documents to the buyers, reserving, however, the right over them until the buyers stated whether they elected to accept the enclosed bills or to pay cash less discount. The bills of lading were taken in the name of the sellers' agents. The goods were damaged on the voyage by a collision, and on the same day the buyers wrote to the sellers' agents enclosing a cheque in payment for the goods. The buyers brought an action against the owners of the other colliding ship to recover for the damage, and the sellers were subsequently added as co-plaintiffs, on the ground that the property had never passed to the buyers, and the ship was held to blame. In the meantime the underwriters, with whom the sellers had effected a policy on the goods, paid the buyers as for a total loss. Upon the assessment of damages the Judge held that, as the sellers had not suffered any damage, they were not entitled to recover any thing.

HELD—that the sellers were entitled to recover the amount of the loss on behalf of the underwriters.

*THE CHARLOTTE*, [1908] P. 206; 77 L. J. P. 132; [99 L. T. 380; 24 T. L. R. 416—C. A.

**VII. NOTE OR MEMORANDUM.**

[No paragraphs in this vol. of the Digest.]

**VIII. PART PAYMENT.**

[No paragraphs in this vol. of the Digest.]

**IX. PASSING OF PROPERTY IN GOODS.**

**5. No Contract—Identity of Purchaser—Essential Error—Question with Innocent Third Party.**—T. falsely represented to M. that he was the son of W. of B., and had authority from him to purchase two cows. M., who knew W. of B. to be a dairyman and in good credit, was deceived by the representation, agreed to sell the cows on the usual credit, and delivered them to T., who

never paid the price. Thereafter R. purchased the cows from T. in good faith, and without knowing that they had been improperly obtained, and paid the price demanded. In an action by M. against R. for delivery of the cows:—

HELD—that the cows were never sold to T., and that a purchaser from him had no title to retain them.

*MORRISON v. ROBERTSON*, [1908] S. C. 332— [Ct. of Sess.

**6. Ship Built Under Contract—Trials—Payment of Instalments—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 16, 18, 62.]**—Scotch shipbuilders agreed to build a ship for an Italian firm under the superintendence of an inspector appointed by the buyers. The price was fixed, and instalments were to be paid at certain stages of the work, but the vessel was not to be considered as completed until it had passed certain trials off both the Scotch and Italian coasts.

HELD—that there was no intention to give delivery or pass the property in the ships so as to enable a creditor of the Italian firm to seize them until they were completed.

*SIR JAMES LAING & Co., LD. v. BARCLAY, [CURLE & Co., LD.]*, [1908] A. C. 35; [1908] S. C. (H. L.) 1; 37 L. J. P. C. 33; 97 L. T. 816; 10 Asp. M. C. 583—H. L. (Sc.)

**X. PASSING OF TITLE TO GOODS.**

[No paragraphs in this vol. of the Digest.]

**XI. SALE OF BUSINESS.**

[No paragraphs in this vol. of the Digest.]

**XII. SALE BY SAMPLE.**

**7. "Goods of a Different Description."]**—Under a sale of goods by sample part of the goods were inferior to sample in quality, but nevertheless were of the kind bought.

HELD—that these were not "goods of a different description" within the meaning of sect. 30, sub-sect. 3, of the Sale of Goods Act, 1893, and that the buyer could not reject them whilst retaining the remainder.

*AITKEN, CAMPBELL & Co. v. BOULLEN AND [GATENBY]*, [1908] S. C. 490—Ct. of Sess.

**XIII. STOPPAGE IN TRANSITU.**

**8. Shipment of Goods and Despatch of Bill of Lading—Purchaser Becoming Insolvent—Re-transfer of Bill of Lading Under Pressure—Stoppage in transitu—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 48 (1)—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 44, 45, 46.]**—Merchants supplied goods on credit to J., and after shipping them forwarded to him the bill of lading. While the goods were at sea, J. became unable to pay his debts as they fell due, and on being pressed by the vendors retransferred to them the bill of lading.

HELD—that such retransfer was due to the pressure and was not an attempt to prefer.

*Semble*, if it had been an attempt to prefer and therefore void, and would have been void for

**Stoppage in Transitu—Continued.**

all purposes and would not have defeated the vendors' right to stop the goods *in transitu*.

*Re O'Sullivan* (1892), 66 L. T. 619) discussed.

*RE JOHNSON, EX PARTE WRIGHT*, 99 L. T. 305;  
[52 Sol. Jo. 622—Bigham, J.]

**XIV. WARRANTY.**

**9. Implied Warranty of Fitness—Reliance on Seller's Skill and Judgment—Non-Manufactured Goods—Coal for Bunkers—Sale of Goods Act, 1893** (56 & 57 Vict. c. 71), s. 14, sub-s. 1.]—J., a salesman to the plaintiffs, asked a shipbroker to give him an order for coal. The broker said that he would be wanting bunker coal for a ship, and that he had been using Auchlochan unscreened coal. J. said that the plaintiffs could supply "S." coal unscreened which he thought would suit if Auchlochan suited. The broker agreed to give an order, but said that it must be given through his coal merchant, the defendant. The defendant thereupon gave J. an order for "S." coal for the ship. The coal proved to be worthless for bunkering.

**HELD**—that the conversation between J. and the broker formed a part of the transaction, that the buyer had made known to the seller the purpose for which the coal was required and relied on his skill and judgment, and that the implied warranty of fitness had been broken.

*CRICHTON AND STEVENSON v. LOVE*, [1908]  
[S. C. 818; 45 Sc. L. R. 600—Ct. of Sess.]

**SALE OF LAND.**

	COL.
I. ABSTRACT OF TITLE . . .	546
II. BUILDING ESTATE . . .	546
III. CONDITIONS AND PARTICULARS OF SALE . . .	547
IV. CONTRACT . . .	548
V. CONVEYANCE . . .	548
[No paragraphs in this vol. of the Digest.]	
VI. LEASEHOLDS . . .	548
[No paragraphs in this vol. of the Digest.]	
VII. MISCELLANEOUS . . .	548
VIII. PARCELS . . .	549
[No paragraphs in this vol. of the Digest.]	
IX. PARTIES . . .	549
[No paragraphs in this vol. of the Digest.]	
X. PRACTICE . . .	549
XI. RESTRICTIVE COVENANTS . . .	549
XII. TITLE . . .	549
[No paragraphs in this vol. of the Digest.]	
XIII. TITLE DEEDS . . .	549
[No paragraphs in this vol. of the Digest.]	

*And see* AGENCY; COMPULSORY PURCHASE; EXECUTORS; LIEN IN EQUITY; REVENUE; WILLS.

Y.D.

**I. ABSTRACT OF TITLE**

*See* No. 3 *infra*.

**II. BUILDING ESTATE.**

**1. Vendor and Purchaser—Restrictive Covenants—Building Scheme—Rights of Purchasers inter se—Restrictions Contained in Unexecuted Engrossment—Reservation of Right to Dispense with Restrictions—Release by Accepting Less Onerous Restrictions—Injunction—Damages.**—Restrictive covenants may be enforced by one purchaser or his successor in title against another or his successor irrespective of the dates of the respective purchases; (1) if both plaintiff and defendant derive title under a common vendor, and (2) if before selling the lands now owned by plaintiff and defendant the vendor laid out his estate or a defined portion thereof (including their lands) for sale in lots subject to restrictions intended to be imposed on all the lots and which, though varying in detail as to particular lots, are consistent and consistent only with a general scheme of development; and (3) if those restrictions were intended by the vendor to be and were for the benefit of all the lots intended to be sold—whether or not for the benefit also of the land retained by the vendor; and (4) if both plaintiff and defendant or their predecessors purchased from the common vendor on the footing that the restrictions were to enure for the benefit of the other lots included in the scheme, whether or not for the benefit of the land retained by the vendor.

In 1860 a building society plotted out part of an estate for sale in numbered lots which were shown on a sale plan on which were printed the conditions on which it was proposed to sell the estate. These conditions were the same as those contained in the engrossment mentioned below, and the plan was identical with the plan annexed to the engrossment. The society did not complete its title to the estate till January, 1861, when it was vested in R. and C., trustees for the society. A few days afterwards an engrossment was prepared, bearing date January 16th, 1861, of an indenture (never executed) between the persons whose names and seals were stated to be but were not subscribed in the second schedule thereto and R. and C. Each of the scheduled parties was to covenant with the other of them and separately with R. and C. to observe the restrictions in the first schedule to the engrossment. The plan annexed showed the estate, part of which was plotted out for sale in numbered lots, and the rest marked as reserved. One of the restrictions was that on no lot should any hotel, tavern, public-house, or beer-house be built, nor any house be used as such without the vendors' consent.

The predecessors of both plaintiffs and defendants both bought plots from R. and C., subject to a covenant to observe the restrictions.

**HELD**—(1) that, notwithstanding the common vendors' right to dispense with adherence to the restrictions, the plaintiffs could enforce them; and

(2) That an injunction should be granted, although no substantial damage was proved.



**Building Estate—Continued.**

*Osborne v. Bradley* ([1903] 2 Ch. 446; 89 L. T. 11—Farwell, J.) distinguished.

Some of the plaintiffs were successors in title of a person who originally bought the land on which the defendants had now erected the hotel complained of; that person, when purchasing, had entered into a restrictive covenant not extending to an hotel.

**HELD**—that so far as his successors in title were concerned, the wider covenant in the engrossment had been waived, and that they could not enforce it.

*ELLISTON v. REACHER*, [1908] 2 Ch. 374; 77 [L. J. Ch. 617; 99 L. T. 346—Parker, J.

Affirmed, [1908] 2 Ch. 665—C. A.

**III. CONDITIONS AND PARTICULARS OF SALE.**

**2. Conditions of Sale—Copyholds—No Evidence to be Required of Discharge of Certain Incumbrances—Conditional Surrender by Way of Mortgage—Statute-barred.**—C. sold to H. copyholds with the condition that no evidence should be required of the payment or discharge of any legacy or sum of money charged on the property which became payable twelve years or upwards before the sale.

It appeared from the Court rolls that 40 years ago C.'s predecessor had conditionally surrendered the property by way of mortgage, but the mortgagee had never been admitted, and for more than twelve years there had been no payment or acknowledgment.

**HELD**—that H. could not require the conditional surrender to be vacated by satisfaction entered upon the Rolls.

*HOPKINSON v. CHAMBERLAIN*, [1908] 1 Ch. 853; [77 L. J. Ch. 567; 98 L. T. 835—Neville, J.

**3. Time for Delivery of Abstract and Requisitions—“Immediately.”**—Premises were sold on December 30th, 1907, subject to conditions of sale which provided—first, that the vendor should “immediately” after the sale, furnish to the purchaser or his solicitor an abstract of title; and secondly, that the purchaser should make his objections and requisitions in respect of the title, and send the same to the office of the vendor's solicitor within four days from the delivery of the abstract, and in this respect time should be of the essence of the contract. The abstract was delivered on January 4th, 1908, and the purchaser's requisitions were sent on January 13th, 1908. The vendor's solicitor declined to answer the requisitions on the ground that they were too late.

**HELD**—that the abstract was not delivered “immediately,” and that therefore the purchaser was not bound by the condition requiring the requisitions to be furnished within four days from the delivery of the abstract.

*IN RE TODD AND M'FADDEN'S CONTRACT*, [1908] [1 I. R. 213—Kenny, J.

**IV. CONTRACT.**

**4. Option to Purchase—Rent “Duly” Paid—Condition Precedent—Specific Performance.**—A tenant under a three years agreement had an option to purchase the leasehold reversion at any time more than three months before the termination of the agreement, provided that the rent had been duly paid. The tenant paid a quarter's rent sixteen days after it was due, and before the next payment was due gave notice of the exercise of the option of purchase.

**HELD**—that “duly” does not mean punctually, and that the tenant had duly paid the rent within the meaning of the agreement, and was entitled to specific performance thereof.

*STARKEY v. BARTON*, 126 L. T. Jo. 143; 43 [L. J. N. C. 774.—Parker, J.

**V. CONVEYANCE.**

[No paragraphs in this vol. of the Digest.]

**VI. LEASEHOLDS.**

[No paragraphs in this vol. of the Digest.]

**VII. MISCELLANEOUS.**

**5. Lease upon Payment of a Fine—Delay—Possession Taken Pending Completion—Liability for Interest from Date of Possession.**—Where a tenancy created *de novo* is sold, and the purchaser takes possession in anticipation of title being made (which title he afterwards accepts), the tenant, notwithstanding that the vendor is in default in making title, cannot rely on payment of rent in respect of the tenancy as a defence to the vendor's claim for interest on the purchase money from the date of the assumption of possession.

*BERESFORD v. CLARKE*, [1908] 2 I. R. 317—[Gibson, J.

**5a. Sale Under Direction of Court—Misrepresentation—Relief.**—In sales under its direction the Court will be scrupulous to see that there shall be no taint of fraud or misrepresentation in the conduct of its ministers.

A sale of land by auction, held under the Court's direction in India, was set aside at the instance of the purchaser on the ground of misrepresentation as to the subject-matter of the sale.

*MAHOMED KALA MEA v. HARPERINK AND OTHERS*, 25 T. L. R. 180—P. C.

**6. Vendor and Purchaser—Several Contracts—One Title—One Conveyance—Scale Fee—General Order, Sched. I., Part I., r. 8.**—The owners of five houses granted separate leases of them on the same day to the same lessee. Each lease gave him an option to purchase, and if he exercised it, he was to pay all legal and other expenses of the lessors as vendors, it being the intention that the lessors should be put to no expense whatever in respect of the conveyance.

The lessee exercised his five options by one letter, received one abstract of title and asked for one conveyance including all the houses. The vendors' solicitors claimed to charge a scale

**Miscellaneous—Continued.**

fee for deducing title and perusing and completing conveyance in respect of each house.

HELD—that they could not do so.

IN RE SIMMONS' CONTRACT, [1908] 1 Ch. 452; [77 L. J. Ch. 215; 98 L. T. 185—Parker, J.]

**VIII. PARCELS.**

[No paragraphs in this vol. of the Digest.]

**IX. PARTIES.**

[No paragraphs in this vol. of the Digest.]

**X. PRACTICE.**

7. *Vendor's Action for Specific Performance—Title Accepted and Conveyance Approved—Form of Order.*]—Comment upon the form of minutes in Seton (6th ed.), p. 2240, n. 6. It is not right to order a purchaser to pay his purchase money without providing for delivery to him of his conveyance.

COOPER v. MORGAN, [1908] W. N. 256—Warrington, J.

**XI. RESTRICTIVE COVENANTS.**

8. *User of Land—Covenant not to Use Building on Land for Place of Business—Stables for Coal Merchant's Business.*]—An owner of a plot of land bound by covenant not to "use or suffer to be used any building which might be erected upon any part or parts of the said plot of land as a hotel, tavern, public-house, beer-house, shop, warehouse, or manufacturing dye-house, chandler's shop, or other place of business," erected stables thereon, which he intended to use for horses employed in his business as a retail coal merchant.

The Court granted an interim injunction against him in the terms of the covenant.

WHITE v. POLLARD, 52 Sol. Jo. 748—Eve, J.

See also No. 1, *supra*, and LANDLORD AND TENANT, No. 9.

**XII. TITLE.**

[No paragraphs in this vol. of the Digest.]

**XIII. TITLE DEEDS.**

[No paragraphs in this vol. of the Digest.]

**SALFORD HUNDRED COURT.**

See COURTS.

**SALMON.**

See FISHERIES.

**SALVAGE.**

See ADMIRALTY; SHIPPING AND NAVIGATION.

**SAMPLES.**

See FOOD AND DRUGS; SALE OF GOODS.

**SANITATION.**

See METROPOLIS; PUBLIC HEALTH.

**SATISFACTION AND DISCHARGE.**

See CONTRACT; JUDGMENT.

**SATISFACTION IN EQUITY.**

See WILLS.

**SAVINGS BANKS.**

See BANKS AND BANKING

**SCHOOLS AND SCHOOL-MASTERS.**

See CHARITIES; EDUCATION.

**SCIENTER.**

See ANIMALS.

**SCIENTIFIC AND LITERARY SOCIETIES.**

[No paragraphs in this vol. of the Digest.]

**SCOTTISH LAW.**

And see HUSBAND AND WIFE, No. 8

1. *Landlord and Tenant—Liability of Landlord—Negligence—Right of Tenant's Wife and Children to Recover Damages—Not Parties to Contract of Tenancy.*]—The rule of English law that the wife or children of the tenant of a dwelling-house cannot, not being parties to the tenancy contract, recover damages from the landlord in respect of illness caused by defects in the house, applies also in Scotland.

*Hall v. Hubner* ((1897) 24 R. 875) overruled; *Cavalier v. Pope* ([1906] A. C. 428; 75 L. J. K. B.

Scottish Law—Continued.

609; 95 L. T. 65; 22 T. L. R. 648—H. L.) followed.

CAMERON v. YOUNG, [1908] A. C. 176; [1908] S. C. (H. L.) 7; 45 Sc. L. R. 410; 77 L. J. P. C. 68; 98 L. T. 592—H. L.

2. *Lease—Lease by Heir of Entail in Possession—Sheep Stock—Taking Over—Liability of Succeeding Heir in Entail.*—In the case of a lease of a sheep farm made by an heir of entail in possession, the obligation to purchase the sheep at the expiry of the lease is personal only to the lessor, and does not bind the next heir of entail.

Decision of Ct. of Sess. ([1908] S. C. 628; 45 Sc. L. R. 514) affirmed.

GILLESPIE v. RIDDELL, [1908] W. N. 219; 46 [Sc. L. R. 29—H. L.

3. *Local Government—Sewers in Burgh—Notice—Consent of Persons Interested—Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), s. 103—Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), s. 217—Burgh Sewerage, Drainage and Water Supply (Scotland) Act, 1901 (1 Edw. 7, c. 24), s. 5.*—The effect of the above-mentioned provisions is that a burgh, when constructing sewers, can proceed either under the Public Health (Scotland) Act, 1897, or the Burgh Police (Scotland) Act, 1892). In proceedings under the Act of 1897 it is not necessary to get the consent of the proprietors interested, which is required under the Act of 1892.

Decision of Ct. of Sess. ([1908] S. C. 127) affirmed.

MONTGOMERIE & Co., LD. v. HADDINGTON CORPORATION, [1908] A. C. 170; 98 L. T. 462—H. L. (Sc.)

SEA AND SEASHORE.

See WATERS AND WATERCOURSES.

SEAMEN.

See MASTER AND SERVANT; SHIPPING AND NAVIGATION.

SECRET COMMISSIONS.

See AGENCY; COMPANIES.

SECURITY FOR COSTS.

See PRACTICE AND PROCEDURE.

SEDUCTION.

See HUSBAND AND WIFE; MASTER AND SERVANT.

SELF-DEFENCE.

See CRIMINAL LAW AND PROCEDURE.

SEPARATE PROPERTY OF MARRIED WOMEN.

See HUSBAND AND WIFE.

SEPARATION, JUDICIAL.

See HUSBAND AND WIFE.

SEQUESTRATION.

See CONTEMPT; PRACTICE AND PROCEDURE.

SERVICE CONTRACTS.

See INFANTS; MASTER AND SERVANT.

SET-OFF AND COUNTER-CLAIM.

See ACTION; ADMIRALTY; AGENCY; BANKERS; BANKRUPTCY; COMPANIES; MORTGAGE; PRACTICE AND PROCEDURE.

SETTLEMENT AND REMOVAL.

See POOR LAW.

SETTLEMENTS.

	COL.
I. GENERAL. . . . .	553
II. CAPITAL MONEYS.	
(a) Improvements. . . . .	554
(i.) General. . . . .	554
(ii.) "Additions and Alterations reasonably Necessary".	555
[No paragraphs in this vol. of the Digest.]	
(iii.) Re-building Mansion House	555
[No paragraphs in this vol. of the Digest.]	
(b) Investment . . . . .	555
[No paragraphs in this vol. of the Digest.]	
III. COMPOUND SETTLEMENTS . . . . .	556
[No paragraphs in this vol. of the Digest.]	



## Settlements—Continued.

COL.

## IV. CONSTRUCTION AND OPERATION.

(a) General . . . . . 556

[No paragraphs in this vol. of the Digest.]

(b) Estate Clause . . . . . 556

[No paragraphs in this vol. of the Digest.]

(c) Words of Limitation . . . . . 556

[No paragraphs in this vol. of the Digest.]

## V. FORFEITURE . . . . . 556

[No paragraphs in this vol. of the Digest.]

## VI. HEIRLOOMS . . . . . 556

## VII. MARRIAGE SETTLEMENTS.

(a) General . . . . . 556

[No paragraphs in this vol. of the Digest.]

(b) Covenant to Settle After-

acquired Property . . . . . 556

(c) Illegal Consideration . . . . . 558

[No paragraphs in this vol. of the Digest.]

(d) Interpretation . . . . . 558

(e) Power of Appointment . . . . . 558

[No paragraphs in this vol. of the Digest.]

## VIII. TENANT FOR LIFE.

(a) General . . . . . 558

[No paragraphs in this vol. of the Digest.]

(b) Persons having the Powers of  
Tenant for Life . . . . . 558

[No paragraphs in this vol. of the Digest.]

(c) Powers . . . . . 558

(i.) General . . . . . 558

[No paragraphs in this vol. of the Digest.]

(ii.) Leasing . . . . . 558

[No paragraphs in this vol. of the Digest.]

(iii.) Sale . . . . . 559

(d) Remainderman and Tenant for  
Life . . . . . 560

(e) Rights and Duties . . . . . 561

[No paragraphs in this vol. of the Digest.]

## IX. TRUSTEES . . . . . 561

## X. VOLUNTARY SETTLEMENTS . . . . . 562

[No paragraphs in this vol. of the Digest.]

See also BANKRUPTCY; DEATH DUTIES;  
FRAUDULENT CONVEYANCES; IN-  
SURANCE, No. 4; LUNATICS, No. 2;  
MINES AND MINERALS; MORT-  
GAGES; PERPETUITIES, No. 2;  
POWERS; REAL PROPERTY; RE-  
VENUE; TRUSTS; WILLS.

## I. GENERAL.

1. Class—"Child or Children"—*Illegitimate Child en ventre sa mère—Marriage with a Deceased Wife's Sister—Reputation.*—A gift to illegitimate children as a class does not include afterborn children. A child born of parents not lawfully married cannot, while *en ventre sa mère*, be reputed to be the son of a particular person. Where a settlement was made on the children of E., who had then gone through the ceremony of marriage with J. K., he having previously been married to a deceased sister of E., and E. was *enceinte* with the plaintiff at the time of the settlement:—

HELD—that the plaintiff took no benefit under the settlement.

*Re Shaw, Robinson v. Shaw* ([1894] 2 Ch. 573; 63 L. J. Ch. 770; 71 L. T. 79; 43 W. R. 43—North, J.) followed.

EBBERN *v.* FOWLER, 52 Sol. Jo. 854; [1908] W. N. 202—Joyce, J.

2. *Devise of Realty in Strict Settlement—Bequest of Personality upon Trusts of Proceeds of Sale of Realty under Settled Land Acts—Whether Tenancy in Tail or Absolute Interest in Personality—Imperative Trust for Conversion.*—Personalty can only be made to devolve as if it had been realty by the creation of an imperative trust for its conversion into realty, and a settlement of such realty. A mere declaration that personalty shall devolve as realty can only be regarded in so far as it may in cases of ambiguity help the Court to construe the instrument as creating an imperative trust for conversion.

A. devised freeholds in strict settlement; and bequeathed his residuary estate on trust for sale and conversion, the proceeds to be held "upon the trusts and in the manner upon and in which the same would be held and applicable if they had arisen from a sale of the settled freeholds" under the Settled Land Act, 1883.

HELD—that the reference to the Act did not amount to an imperative trust for conversion; that the personalty was not converted, and that, therefore, under the trusts declared, A's daughters on attaining twenty-one took an absolute interest in their respective shares of it.

IN RE WALKER, MACKINTOSH-WALKER *v.* [WALKER, [1908] 2 Ch. 705; 77 L. J. Ch. 755; 99 L. T. 469—Parker, J.

3. *Settled Land—General Powers of Leasing—Settled Estates Act, 1877* (40 & 41 Vict. c. 18), ss. 10, 13.—There is nothing in the Settled Estates Acts to limit the power of the Court under sects. 20, 21, of the Act of 1875, to cases in which all interested persons are already *in esse*.

RE CHESHIRE'S SETTLED ESTATES, [1908] W. N. 76—Parker, J.

## II. CAPITAL MONEYS.

## (a) Improvements.

## (i.) In General.

4. *Building Scheme—Extra Expense—Settled Land Acts, 1882* (45 & 46 Vict. c. 38), ss. 25, 26; and 1890 (53 & 54 Vict. c. 69), s. 15.—A tenant for life of settled land submitted to the trustees of the settlement a scheme for the expenditure of capital money upon an "improvement" within the meaning of sect. 25 of the Settled Land Act, 1882, as extended by the settlement—namely, upon the alteration of and an addition to an existing building for the purpose of providing a village institute, at an estimated cost of £450. The trustees approved the scheme without attaching any condition as to the cost. Subsequently the tenant for life altered the scheme by substituting one large room instead of two smaller ones, and carried the work out at a cost of £829. Upon an application by the tenant for life to the Court:—

HELD—that, notwithstanding the increased cost of the building, the work was carried out

**Capital Moneys—Continued.**

under the scheme which had been approved by the trustees of the settlement, and that, therefore, the increased cost ought to be allowed out of capital money.

HELD FURTHER—that, even if the work was not carried out under the scheme, the improvement was one for which no scheme had been submitted to the trustees, and the Court had power to authorise payment to be made out of capital money under sect. 15 of the Settled Land Act, 1890.

IN RE EARL OF EGMONT'S SETTLEMENT, 24 [T. L. R. 783; [1908] W. N. 176—Warrington, J.

5. *English Settlement—Land in Scotland—Power to Lay out Money in Purchase of Land—Improvements on the Land in Scotland—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), ss. 21, 23, 23; and 1890 (53 & 54 Vict. c. 69), s. 13.*—An English settlement comprised some land in Scotland, and contained power to lay out capital moneys in purchase of real estate in England.

HELD—that capital moneys might be applied to improvements on the Scotch settled land.

IN RE GURNEY'S SETTLEMENT, SULLIVAN v. [GURNEY, [1907] 2 Ch. 496; 76 L. J. Ch. 609; 97 L. T. 687—Neville, J.

6. *Submission of Scheme—Works Executed before Submission and before Order giving Tenant for Life Possession and Powers of Tenant for Life—Payment Out of Capital Moneys—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), s. 63; and 1890 (53 & 54 Vict. c. 69), s. 15.*—E. devised his estates on trust for sale, with power of postponement, the income of the proceeds to go to W. for life.

The sale was postponed and W. obtained an order giving him possession and liberty to exercise all the powers of a tenant for life. A month after the order he submitted a scheme to the trustees for improvements; he had in fact executed part of the work and made payments on account of the work before the order.

HELD—that the Court could sanction the application of capital towards paying for the improvements.

*Semble*, W. being "tenant for life," was at all material times in a position to submit a scheme even before the order, because the submission of a scheme is not the "exercise" of a life tenant's powers and does not require the leave of the Court. Even if he were not, sect. 15 of the Act of 1890 is not limited to cases where a scheme might have been submitted by the tenant for life.

IN RE WORMALD'S SETTLED ESTATE, WORMALD [v. OLIVER, [1908] W. N. 214—Warrington, J.

(ii.) "*Additions and Alterations Reasonably Necessary.*"

[No paragraphs in this vol. of the Digest.]

(iii.) *Re-building Mansion House.*

[No paragraphs in this vol. of the Digest.]

(b) **Investment.**

[No paragraphs in this vol. of the Digest.]

**III. COMPOUND SETTLEMENTS.**

[No paragraphs in this vol. of the Digest.]

**IV. CONSTRUCTION AND OPERATION.**

(a) **General.**

[No paragraphs in this vol. of the Digest.]

(b) **Estate Clause.**

[No paragraphs in this vol. of the Digest.]

(c) **Words of Limitation.**

[No paragraphs in this vol. of the Digest.]

**V. FORFEITURE.**

[No paragraphs in this vol. of the Digest.]

**VI. HEIRLOOMS.**

7. *Insurance of—Trustees Holding Capital Moneys—Payment of Premiums out of Income thereof—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 18.*—Chattels settled so as to devolve as heirlooms with settled land are "insurable property," and the trustees may insure them against fire, and pay the premiums out of the income of capital moneys in their hands and subject to the same trusts.

IN RE EGMONT'S (EARL OF) TRUSTS, LEFROY [v. EGMONT (EARL OF), [1908] 1 Ch. 821; 77 L. J. Ch. 479; 98 L. T. 826—Warrington, J.

**VII. MARRIAGE SETTLEMENTS.**

(a) **General.**

[No paragraphs in this vol. of the Digest.]

(b) **Covenant to Settle After-acquired Property.**

8. *Jointure—Contemporaneous Jointure Deed—Mortgage of Jointure.*—The applicant in a summons asked whether a covenant by her to settle after-acquired property to which she should become absolutely entitled, contained in her marriage settlement, operated to include a jointure created in her favour by a jointure deed of even date. She had mortgaged this jointure, and upon an order for sale made in a foreclosure action the question arose whether the charge was invalid by reason of the restraint on anticipation in the marriage settlement. The settlement did not refer in any way to the contemporaneous jointure deed.

HELD—that the jointure was neither by intention nor in fact caught by the settlement, as the jointure was appointed subject to two conditions, viz., marriage and survival, the latter of which was still to be fulfilled, and the applicant was not therefore "absolutely" entitled to it.

IN RE THE MARCHIONESS OF HUNTLY'S [JOINTURE, *Times*, April 29th, 1908—Eve, J.

9. *Property by Lex Loci Incapable of being Transferred—Land in Jersey.*—A covenant to settle after-acquired property does not extend to real property, which, according to the *lex loci*—e.g., in Jersey—is not capable of being transferred except for adequate pecuniary consideration.

*Re Dunsany's Settlement* ([1906] 1 Ch. 578; 75 L. J. Ch. 356; 94 L. T. 361—C. A.) applied.

RE PEARSE'S SETTLEMENT, 53 Sol. Jo. 82; [[1908] W. N. 244—Eve, J.

**Marriage Settlements—Continued.**

10. "*Property in Possession or Expectancy*"—*Exception of Property Settled on Her for Separate Use—Contingent Reversionary Interest.*]

—A marriage settlement contained a covenant by both husband and wife that all future real and personal estate and effects whatsoever, whether in possession or expectancy, of or to which the husband and wife or either of them in her right or by marital right should at any time or times during coverture become seised, possessed, or entitled, or of or to which the husband, or any person claiming through or under him, should by any means whatsoever become in her right or by marital right at any time or times after the marriage seised, possessed or entitled, except only any property settled on her for her separate use, should be transferred to the trustees and settled upon the trusts of the settlement. During coverture the wife became entitled under her mother's will to a contingent reversionary interest in the proceeds of the sale of real and personal property settled for her separate use, and under a codicil to a contingency reversionary interest in another part of the proceeds not settled for her separate use. After her husband's death the first interest fell into possession; the interest under the codicil was still reversionary.

HELD—that the interest under the will was not, but the interest under the codicil was, within the covenant.

The effect of covenants to settle after-acquired property considered.

LOYD *v.* PRICHARD, [1908] 1 Ch. 265; 77 [L. J. Ch. 183; 97 L. T. 904; 52 Sol. Jo. 58—Parker, J.

11. "*Property*," "*Power*"—*Bequest to such Persons as Wife shall Appoint.*—A covenant to settle after-acquired property does not extend to money bequeathed to such persons as she may appoint, and which she does appoint to another (e.g., her husband).

VETCH *v.* ELDER, [1908] W. N. 137—Eady, J.

12. *Reversionary Interest Vested Before Marriage*—"Became Entitled or which may Devolve upon or Vest."—A reversionary interest, subject to a power of appointment, to which a woman married in 1885 was entitled before her marriage, is not caught by a covenant in her marriage settlement to settle after-acquired property to which she "may during the said intended coverture become entitled or which may devolve upon or vest in" her.

IN RE YARDLEY'S SETTLEMENT; MILWARD *v.* [YARDLEY, 124 L. T. Jo. 315—Eve, J.

13. *Voluntary Post-Nuptial Settlement—Fund Included in Earlier Marriage Settlement—Power to Appoint—Appointment to Self on Dissolution of Marriage by Divorce—Settled Land in Ireland—Bonus Percentage on Sale of Land in Ireland—Irish Land Acts.*—On her marriage in 1897, E. R. settled on ordinary trusts a fund which in fact became ascertained and payable to the trustees in 1905. By a post-nuptial voluntary settlement in 1902 her life interest in certain land in Ireland was settled upon trust for her separate use, and she covenanted to settle

any property (other than the property specifically settled) to which she might during her coverture become entitled, upon the trusts therein mentioned. In 1904 her marriage was dissolved and she subsequently sold the land under the Irish Land Act, 1903.

HELD—that the percentage bonus payable under sect. 48 of the Act of 1903 was "property" belonging to her as soon as the Act came into force during her coverture, and came within the covenant to settle after-acquired property.

There being no child of the marriage, the property settled by her in 1897 was ordered to be reconveyed to her, and in 1906 she accordingly appointed the settled funds to herself under the power of appointment given her by the settlement.

HELD—that the settled fund was not "property" during her coverture, for she had only a power of appointment over it, and it was therefore not within the covenant to settle.

In *re Lady Annaly's Trusts* ((1904), 92 L. T. 13) and *In re Power's Estate* ([1907] 1 I. R. 51) followed on the first point.

*Townshend v. Harrouby* ((1858), 27 L. J. Ch. 553) followed on the second.

In *re O'Connell* ([1903] 2 Ch. 574; 72 L. J. Ch. 709; 89 L. T. 166—Kekewich, J.) not followed.

TREMAINE *v.* RASHLEIGH, [1908] 1 Ch. 681; [77 L. J. Ch. 292, 365; 98 L. T. 613; 24 T. L. R. 298; 52 Sol. Jo. 263—Eve, J.

**(c) Illegal Consideration.**

[No paragraphs in this vol. of the Digest.]

**(d) Interpretation.**

14. *Construction—Estate by Implication—Omission of any Trust for Wife—Fund Settled by Her Father.*—A father settled a fund upon his daughter's marriage; the trusts were for the husband during the joint lives; for the husband absolutely if the wife died first leaving no children; for the husband for life if she died first leaving no children. There was no trust for the wife or for children in the event of the husband dying first.

HELD—that by necessary implication there was in such event a trust for the wife absolutely. SWEETMAN *v.* BUTLER, [1908] 1 I. R. 517—[M. R.

**(e) Power of Appointment.**

[No paragraphs in this vol. of the Digest.]

**VIII. TENANT FOR LIFE.**

See also II., *supra*.

**(a) General.**

[No paragraphs in this vol. of the Digest.]

**(b) Persons having the Powers of Tenant for Life.**

[No paragraphs in this vol. of the Digest.]

**(c) Powers.**

[No paragraphs in this vol. of the Digest.]

**(i.) General.**

[No paragraphs in this vol. of the Digest.]

**(ii.) Leasing.**

[No paragraphs in this vol. of the Digest.]



**Tenant for Life—Continued.**(iii.) *Sale.*

**15. Life Estate Mortgaged—Consent of Mortgagee—Need not Join in Conveyance—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 20, sub-s. 2; s. 50.]**—A life tenant of settled land had mortgaged his life estate. He agreed to sell the land under the powers of the Settled Land Acts, and the mortgagee consented to the sale pursuant to sect. 50 of the Settled Land Act, 1882.

**HELD**—that the purchaser could not require the mortgagee to join in the conveyance, and that, without such concurrence, he got a good statutory title.

*Dictum* of North, J. in *In re Sebright's Settled Estates* ((1886), 33 Ch. D. 429) not followed.

**IN RE DICKIN AND KELSALL'S CONTRACT**, [[1908] 1 Ch. 213; 77 L. J. Ch. 177; 98 L. T. 371—Eady, J.

**16. Principal Mansion-House—Two Estates with Houses—One Estate Let for Building—House Converted into School—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 10, sub-s. 2.]**—By his will a testator devised his land to his son for life with remainders over. The land consisted of two separate estates, upon each of which there was a mansion-house. One of the houses originally stood in a park of about one hundred acres; but since the testator's death part of the park had, with the sanction of the Court, been sold for building purposes, and a large part was laid out for building; and the house with a small portion of the park had been let on lease for a school.

**HELD**—that the house was no longer a principal mansion-house within sect. 10, sub-sect. 2, of the Settled Land Act, 1890.

**IN RE WYTHES, WEST v. WYTHES**, [1908] 1 Ch. [593; 77 L. J. Ch. 319; 98 L. T. 277; 24 T. L. R. 251—Eve, J.

**17. Release of Easement Enjoyed with Settled Land—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 10; s. 3, sub-ss. 1; ss. 17, 21; and 1890 (53 & 54 Vict. c. 69), s. 5.**

Joyce, J., having held that a tenant for life has no power, under the Settled Land Acts, 1882 to 1890, to release a right of way enjoyed in connection with settled land over another tenement, in exchange for a release of a similar right of way enjoyed over his settled land, the Court of Appeal suggested that the object could be attained by cross-sales of the easements.

Decision of Joyce, J. (77 L. J. Ch. 58; 97 L. T. 880) varied by consent.

**IN RE BROTHERTON, BROTHERTON v. BROTHERTON**, 77 L. J. Ch. 373; 98 L. T. 547; [1908] W. N. 56—C. A.

**18. Settled Land—Payments to be Made in Future to Person "In Possession or Receipt of the Rents and Profits"—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 22, 53.]**—A testator limited his estate, H., to L. as tenant for life with remainders over. He also bequeathed a number

of annuities, and directed his trustees to set apart an annuity fund to provide for them. He further declared that, upon the cesser of any annuity, so much of the annuity fund as was thereby freed should revert to and become the absolute property of "the person, if any, who shall at the time be in possession or receipt of the rents and profits of" H. He devised his residuary real and personal estate to L. The questions were whether L., the tenant for life, could sell H., and, if so, what would be the rights of the parties with regard to the annuity fund.

**HELD**—that the mere fact that selling was advantageous to a tenant for life was no reason to prevent the tenant for life from selling; that the words giving the annuity fund, or cesser of any annuity, were a bequest of a pecuniary legacy, which was quite independent of the gift of H.; that sect. 22 of the Settled Land Act, 1882, providing that capital money arising under the Act and the income should go as if the land still remained, did not provide that other independent funds should go in the same way; and that this was a legacy to persons to be ascertained by a certain description, viz., owners under the will of H., and if no one should answer to the description the land would go to the residuary legatee.

**IN RE HARE, LEYCESTER-PENRHYN v. LEYCESTER-PENRHYN**, 43 L. J. N. C. 659—Warrington, J.

**(d) Remainderman and Tenant for Life.**

**19. Mortgage Security—Deficiency of Interest—Settlor Taking First Life Interest—Life Tenant's Death—Subsequent Receipts in Respect of Past and Accruing Income—Apportionment Pending Realisation—Arrears due at Date of Settlement.]**—In 1884 a father and son re-settled a mortgage of £18,000 on farm A on trusts for themselves as successive life tenants and a remainderman. No provision was made for some three years' arrears of interest then owing to the father.

From 1881 to 1902 the mortgagor had worked farm A together with another mortgaged farm B under an arrangement by which he was to pay the net incomes to the mortgagees of farm A and farm B respectively to the extent of the interest due to them.

The net incomes were not sufficient to keep down the interest in either case; but owing to an error the mortgagees of farm B had been paid £1,028 in excess of the income properly attributable to their farm. In 1905, however, the trustees recovered the £1,028, representing income earned from 1881 to 1902 from the mortgagees of farm B.

The father had died in 1893.

From 1902 to 1906 the mortgagor continued to work farm A as manager to the trustees.

In 1903 the son died.

In 1906 the trustees let farm A at a rent of £515, and received £2,368 in respect of the sale of farm stock provided out of income earned between 1881 and 1906.

The interest was now heavily in arrear, and foreclosure proceedings had been commenced, but no order had yet been made.

**Tenant for Life—Continued.**

**HELD**—(1) that the father's representative could not as against the other beneficiaries claim any arrears of interest owing at the date of the settlement; but (2) that subject to this exception the two sums of £1,028 and £2,368 and every sum of accruing rent received up to the time of foreclosure absolute, must be treated as payment on account of all arrears of interest owing at the date of payment, and must be apportioned between the estates of the two life tenants and the remainderman in proportion to the amounts owing to them for arrears of interest at the date when each sum was received.

IN RE BROADWOOD'S SETTLEMENTS, BROADWOOD *v.* BROADWOOD, [1908] 1 Ch. 115; 77 L. J. Ch. 18; 98 L. T. 217—Eady, J.

**20. Settled Leaseholds—No Power of Sale—Sale by Court—Income of Proceeds of Leaseholds—Apportionment.**—Where settled leaseholds—there being no trust for or power of sale—are sold by the Court, the tenant for life is entitled to an annuity of such an amount that the payment of it would exhaust the purchase money in the number of years which the leases have to run.

IN RE LINGARD, LINGARD *v.* SQUIRRELL, [1908] [W. N. 107—Neville, J.

**(e) Rights and Duties.**

[No paragraphs in this vol. of the Digest.]

**IX. TRUSTEES.**

**21. Powers of—Land Settled by Will—Powers Created by Private Act—Consent of Tenant for Life—Compound Settlement—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 2 (1), 56 (1), (2).**—Land was settled by will, and a private Act conferred certain powers of management upon the trustees. The Act did not incorporate the will or create any limitations or trusts.

**HELD**—that the Act was not part of "the settlement" and that the trustees could exercise their powers under it without the consent of the tenant for life.

TALBOT *v.* SCARISBRICK, [1908] 1 Ch. 812; 77 [L. J. Ch. 436; 99 L. T. 46—Warrington, J.

**22. Realty—Trust to Sell—Power to Sell Surface and Underlying Minerals Separately—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 44.**—The Court by an order (in form No. 2, Seton, p. 1748) sanctioned a proposal for trustees, holding land under a will upon trust to sell and convert, to sell the surface and underlying minerals separately.

IN RE COLEMAN, 52 Sol. Jo. 794—Coleridge, J.

**88. Settled Land—Trust for Sale—Sale of Part—Horizontal Substratum.**—The trustees of a settlement had power to sell the whole or any part of the settled lands. They took out this summons to determine whether they had power to sell the fee simple in a stratum of earth lying four feet below the surface, and above subjacent minerals previously sold by the trustees in exercise of

powers conferred by the Court. The question was whether there was power to sell a horizontal substratum or only from the surface downwards *ad inferos*.

**HELD**—that the trustees had, under the trusts for sale contained in the settlement, power to sell the fee simple in the stratum, apart from the surface, as being a part of the settled land.

RE EARDLEY AND BIRKS' SETTLEMENTS; [JACKSON *v.* COOPER, 124 L. T. Jo. 503—Neville, J.

**X. VOLUNTARY SETTLEMENTS.**

[No paragraphs in this vol. of the Digest.]

**SEVERAL FISHERY.**

See FISHERIES.

**SEWERS AND DRAINS.**

	COL.
I. "DRAIN" OR "SEWER".	562
[No paragraphs in this vol. of the Digest.]	
II. "SINGLE PRIVATE DRAINS".	562
III. RIGHTS AND DUTIES.	
(a) General	563
(b) Cesspools	564
[No paragraphs in this vol. of the Digest.]	
(c) Drainage and Sewerage	564
[No paragraphs in this vol. of the Digest.]	
(d) Nuisances	564
(e) Vesting in Local Authority	564
[No paragraphs in this vol. of the Digest.]	
IV. LAND DRAINAGE	565

And see HIGHWAYS (PRIVATE STREET WORKS); METROPOLIS; NUISANCE; PUBLIC HEALTH; WATER AND WATERCOURSES.

**I. "DRAIN" OR "SEWER."**

[No paragraphs in this vol. of the Digest.]

**II. "SINGLE PRIVATE DRAINS."**

**1. Pipe Draining Houses of More than One Owner—Drainage Passing through Sewer and thence into Pipe—Whether Single Private Drain—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 41—Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 19.**—A row of houses, of which six belonged to the respondent and the remainder to other owners, were drained by a system of pipes arranged as follows: The houses were drained in pairs; each house of a pair was drained by a separate pipe which discharged into a pipe common to both houses, and each common pipe discharged into a line of pipes laid in private ground behind the houses, which conveyed the drainage to a public sewer. It was admitted by the appellants that the common pipes through which the drainage of the respondent's houses passed were sewers within the meaning of the Public Health Act, 1875.

**"Single Private Drains"—Continued.**

**HELD**—that the respondent's houses were not connected with the public sewer by a single private drain within the meaning of sect. 19 of the Public Health Acts Amendment Act, 1890, and that, therefore, the respondent was not liable under that section and sect. 41 of the Public Health Act, 1875, to contribute to the expense of repairing the line of pipes behind the houses.

**Per Curiam** : On the facts stated in the special case, it was not shown that the line of pipes in question was a "single private drain."

**Per Lord Atkinson** (the Lord Chancellor and Lord Macnaghten assenting) : Sect. 19 of the Act of 1890 deals only with a pipe (from houses owned by different persons) to which sect. 23 or sect. 25 of the Act of 1875 applies, or which would have come within the purview of sect. 41 of the Act of 1875, but for the statutory definition of "drain" and "sewer."

**Per Lord Atkinson** (the Lord Chancellor and Lord Macnaghten apparently assenting, but Lord Ashbourne dissenting) : A house may be "connected with" a public sewer by a single private drain, although its sewage passes through a short length of "sewer" before entering such single private drain.

Decision of C. A. ([1907] 1 K. B. 182; 76 L. J. K. B. 173; 71 J. P. 89; 96 L. T. 176; 23 T. L. R. 126; 5 L. G. R. 322) affirmed.

**WOOD GREEN URBAN DISTRICT COUNCIL v. JOSEPH**, [1908] A. C. 419; 77 L. J. K. B. 924; 72 J. P. 393; 24 T. L. R. 850; 52 Sol. Jo. 726; 6 L. G. R. 980—H. L.

### III. RIGHTS AND DUTIES.

#### (a) General.

**2. Drain—Connection with Sewer—Inspection Chamber—Right to Construct in Foot-pavement—Public Health Act, 1875** (38 & 39 Vict. c. 55), s. 21.]—The owner or occupier of a house in a street is not entitled to break up the surface of the footway for the purpose of constructing therein an inspection chamber in a drain connecting the drainage of the house with the public sewer.

*Semble*, that he has the right, when making the connection between his drain and the sewer, to construct an inspection chamber beneath the footway.

**ATTORNEY-GENERAL v. ASHBY**, 71 J. P. 387; [97 L. T. 479; 23 T. L. R. 498; 5 L. G. R. 1192—Joyce, J.]

On appeal : settled after discussion, 72 J. P. 453; 6 L. G. R. 1058—C. A.

**3. Laying Sewers Through Private Land—Compensation—Land Injurious Affected by Other Works Forming Part of same System on Land of Another Owner—"Full Compensation"**—**Public Health Act, 1875** (38 & 39 Vict. c. 55), ss. 16, 17, 308.]—A local authority, under the powers conferred upon them by the Public Health Act, 1875, laid certain sewers through the claimant's land and paid compensation in

respect thereof. The local authority then proceeded to construct, on neighbouring land not belonging to the claimant, a pumping station, sewage reservoir and outfall sewer, which, together with the sewers laid through the claimant's land, were intended to form one system of sewage works.

The claimant claimed compensation under s. 308 of the Public Health Act, 1875, for depreciation caused to his land by the construction of the pumping station and reservoir on the neighbouring land.

**HELD**—that as the works were not being constructed on land belonging to the claimant, he was not entitled to recover compensation, although such works formed one system with, and were connected with, the sewers laid through the claimant's land.

Decision of Bigham, J. ([1907] 1 K. B. 14; 76 L. J. K. B. 91; 71 J. P. 69; 96 L. T. 84; 23 T. L. R. 75; 5 L. G. R. 22) affirmed.

**HORTON v. COLWYN BAY AND COLWYN URBAN DISTRICT COUNCIL**, [1908] 1 K. B. 327; 77 L. J. K. B. 215; 72 J. P. 57; 98 L. T. 547; 24 T. L. R. 220; 6 L. G. R. 211; 52 Sol. Jo. 158—C. A.

#### (b) Cesspools.

[No paragraphs in this vol. of the Digest.]

#### (c) Drainage and Sewerage.

[No paragraphs in this vol. of the Digest.]

#### (d) Nuisances.

**4. Single Private Drain—Nuisance—Notice to Occupier before Entry—Repair—Liability of Neighbouring Owner—Public Health Act, 1875** (38 & 39 Vict. c. 55), s. 41—**Public Health Acts Amendment Act, 1890** (53 & 54 Vict. c. 59), s. 19.]—The drainage of two adjoining dwelling-houses in the district of the appellants was carried into the public sewer through a single private drain, and the occupier of one of the houses complained to the appellants that the drains at his house were a nuisance. Upon inspection at that house it was found that the drain was not in order. The respondent was the owner of the other adjoining dwelling-house. No notice of intention to inspect at such house was given to the occupier, nor was inspection made; but notice was served upon the respondent requiring him in conjunction with the owners of the first-named premises to do the work of relaying the drains. The owners made default, and the appellants did the work themselves.

**HELD**—that the fact that no notice under s. 41 of the Public Health Act, 1875, had been served on the occupier of the premises of which the respondent was the owner, and the fact that no "emergency" was proved, did not preclude the appellants from recovering from the respondent the apportioned cost of the work of relaying.

**BROMLEY CORPORATION v. CHESHIRE**, [1908] 1 K. B. 680; 77 L. J. K. B. 332; 72 J. P. 34; 98 L. T. 243; 6 L. G. R. 156—Div. Ct.

#### (e) Vesting in Local Authority.

[No paragraphs in this vol. of the Digest.]



## IV. LAND DRAINAGE.

5. *Land Drainage—Neglect to Scour Channel—Accumulation of Silt—Injury to Mill Wheel up Stream—Injury Caused to "Land"*—*Land Drainage Act, 1847* (10 & 11 Vict. c. 38), ss. 14, 15.]—By sect. 14 of the Land Drainage Act, 1847: "... in all cases where by reason of the neglect of any such occupier . . . to cleanse and scour . . . the channels, of existing drains, streams or water-courses lying in or bounding the lands of such occupier, injury shall be caused to any other land, it shall be lawful for the proprietor or occupier of any land so injured to require the proprietor or occupier so neglecting as aforesaid, by a notice in writing delivered to him . . . effectually to . . . cleanse or scour such channels . . ."

HELD—that the words in sect. 14 "injury . . . caused to any other land" do not include injurious affection of a mill due to the accumulation of silt in the stream below the mill wheel and the consequent backing-up of water.

FINCH v. BANNISTER, [1908] 1 K. B. 485; 77 [L. J. K. B. 313; 72 J. P. 73; 97 L. T. 913—Div. Ct.]

Affirmed, [1908] 2 K. B. 441; 77 L. J. K. B. 718; 72 J. P. 73; 99 L. T. 228; 24 T. L. R. 435; 52 Sol. Jo. 354; 6 L. G. R. 534—C. A.

## SHANGHAI.

See DEPENDENCIES AND COLONIES.

## SHARES.

See COMPANIES.

## SHEEP DIPPING.

See ANIMALS.

## SHEEP SCAB.

See ANIMALS.

## SHERIFFS AND BAILIFFS.

See also BANKRUPTCY; COUNTY COURTS; CRIMINAL LAW, No. 36; DISTRESS; EXECUTION; INTERPLEADER; METROPOLIS; PRACTICE AND PROCEDURE; PUBLIC AUTHORITIES.

1. *Execution—Seizure of Goods—Money Subsequently Placed by Debtor in Article Seized—Death of Debtor—Administration of Insolvent Estate—Right to Money—Judgments Act, 1838*

(1 & 2 Vict. c. 110), s. 12.]—A sheriff cannot under a *fi. fa.* issued in a judgment debtor's lifetime seize after the debtor's death money belonging to him at the time of his death.

The goods of a judgment debtor were seized by the sheriff under a writ of *fi. fa.* in execution of a judgment. While the sheriff remained in possession of the goods the debtor placed some bank notes in the drawer of a piece of furniture which had been seized by, and which was then in the possession of, the sheriff. The sheriff was not aware that the debtor had done so. The debtor died insolvent, and while the sheriff was still in possession an order was made for the administration of his estate under sect. 125 of the Bankruptcy Act, 1883. The trustee of the estate claimed the bank notes placed in the drawer as against the execution creditor.

HELD—(1) that there had been no seizure of the notes in the debtor's lifetime. (2) That money, notes and other documents mentioned in sect. 12 of the Judgments Act, 1838, cannot be seized after the debtor's death; and that, therefore the trustee was entitled to the money.

Decision of Lawrance, J. ([1907] 2 K. B. 437; 76 L. J. K. B. 904; 97 L. T. 516; 23 T. L. R. 579; 14 Manson, 191) reversed.

JOHNSON v. PICKERING, NORTON, CLAIMANT, [1908] 1 K. B. 1; 77 L. J. K. B. 13; 98 L. T. 68; 24 T. L. R. 1; 14 Manson, 263—C. A.

## SHIPPING AND NAVIGATION.

COL.

## I. OWNERSHIP AND CONTROL OF SHIP

- (a) Action of Restraint . . . . . 568
- [No paragraphs in this vol. of the Digest.]
- (b) Liability for Disbursements . . . . . 568
- (c) Mortgage . . . . . 569
- (d) Sale . . . . . 571
- [No paragraphs in this vol. of the Digest.]
- (e) Ownership . . . . . 571

## II. SEAMEN.

- (a) Advance of Wages . . . . . 571
- [No paragraphs in this vol. of the Digest.]
- (b) Bonus . . . . . 571
- [No paragraphs in this vol. of the Digest.]
- (c) Effect of Carrying Contraband . . . . . 571
- (d) Miscellaneous . . . . . 572
- (e) Termination of Service . . . . . 572

## III. HIRE OF SHIP.

- (a) Detention of Ship . . . . . 573
- (b) Exceptions in Charter-party . . . . . 573
- (c) Loading and Discharge of Cargo . . . . . 577
- (d) Miscellaneous . . . . . 579
- (e) Payment of Freight . . . . . 581
- (f) Period of Hire . . . . . 581
- (g) Warranties . . . . . 582
- [No paragraphs in this vol. of the Digest.]

## IV. INCORPORATION OF CHARTER-PARTY IN BILL OF LADING

582

## V. CARRIAGE OF GOODS.

- (a) Deviation of Ship . . . . . 583
- (b) Discharge of Cargo . . . . . 584
- (c) Documents of Title . . . . . 584

[No paragraphs in this vol. of the Digest.]

Shipping and Navigation—*Continued.*V. CARRIAGE OF GOODS—*Continued.*

	COL.
(d) Exceptions in Bill of Lading . . . . .	584
(e) Freight . . . . .	586
(f) Miscellaneous . . . . .	586
(g) Short Delivery . . . . .	586
[No paragraphs in this vol. of the Digest.]	
(h) Through Bill of Lading . . . . .	586
(i) Warranties . . . . .	587
[No paragraphs in this vol. of the Digest.]	

## VI. DEMURRAGE.

(a) Averaging Days . . . . .	587
[No paragraphs in this vol. of the Digest.]	
(b) Colliery Guarantee . . . . .	587
[No paragraphs in this vol. of the Digest.]	
(c) Commencement of Lay Days . . . . .	587
(d) Computation of Time . . . . .	588
[No paragraphs in this vol. of the Digest.]	
(e) Custom of Port . . . . .	588
(f) Excepted Days . . . . .	588
[No paragraphs in this vol. of the Digest.]	
(g) Exception of Strikes, etc. . . . .	588
[No paragraphs in this vol. of the Digest.]	
(h) Miscellaneous . . . . .	588

## VII. MARITIME LIENS.

(a) Generally . . . . .	589
[No paragraphs in this vol. of the Digest.]	
(b) Owner's Lien . . . . .	589
[No paragraphs in this vol. of the Digest.]	

## VIII. BOTTOMRY . . . . . 589

[No paragraphs in this vol. of the Digest.]

## IX. GENERAL AVERAGE . . . . . 589

## X. RULES FOR PREVENTING COLLISIONS.

(a) Fog . . . . .	589
(b) Generally . . . . .	591
(c) Lights . . . . .	594
(d) Narrow Channel . . . . .	595
(e) Negligence . . . . .	596
(f) Sound Signals . . . . .	596
(g) Tug and Tow . . . . .	597
[No paragraphs in this vol. of the Digest.]	
(h) Vessels Crossing . . . . .	597

## XI. COLLISION ACTIONS.

(a) Division of Loss . . . . .	598
[No paragraphs in this vol. of the Digest.]	
(b) Limitation of Liability . . . . .	598
(c) Measure of Damages . . . . .	599
(d) Practice . . . . .	600

## XII. SALVAGE.

(a) Agreements for Salvage . . . . .	601
(b) Apportionment of Award . . . . .	601
(c) Basis of Valuation . . . . .	602
[No paragraphs in this vol. of the Digest.]	
(d) Derelicts . . . . .	602
[No paragraphs in this vol. of the Digest.]	
(e) Generally . . . . .	602
(f) Life Salvage . . . . .	602
(g) Practice . . . . .	602
(h) Towage . . . . .	602
[No paragraphs in this vol. of the Digest.]	

## XIII. TOWAGE CONTRACTS . . . . . 602

## XIV. PILOTAGE.

COL.

(a) Authority of Pilot . . . . .	603
(b) Defence of Compulsory Pilotage . . . . .	603
(c) Exempted Ships . . . . .	604
[No paragraphs in this vol. of the Digest.]	
(d) Limits of Compulsory Pilotage . . . . .	604
[No paragraphs in this vol. of the Digest.]	
(e) Miscellaneous . . . . .	604
[No paragraphs in this vol. of the Digest.]	

## XV. HARBOURS AND DOCKS.

(a) Authority of Harbour Master . . . . .	604
(b) Dues . . . . .	604
(c) Liability of Harbour Authority . . . . .	607
(d) Liability of Wharf Owner . . . . .	607
[No paragraphs in this vol. of the Digest.]	
(e) Miscellaneous . . . . .	607
[No paragraphs in this vol. of the Digest.]	

## XVI. MISCELLANEOUS SHIPPING

REGULATIONS . . . . . 607

*See also* ADMIRALTY; BILLS OF LADING;  
CARRIERS, No. 1; DAMAGES, No. 2;  
PRACTICE AND PROCEDURE.

## I. OWNERSHIP AND CONTROL OF SHIP.

## (a) Action of Restraint.

[No paragraphs in this vol. of the Digest.]

## (b) Liability for Disbursements.

1. *Necessaries Supplied on Credit of Ship — Claim of Defendants as Purchasers of Ship — Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 5.]*—The registered owners of a certain vessel were trustees for the defendants, who had bought her from B. and had paid to him nearly the whole of the purchase-money before the necessaries, subsequently referred to, were supplied. B.'s interest was limited to a small balance of purchase-money and was subject to the obligation of delivery of the ship to the defendants according to his contract.

The plaintiffs supplied to B. necessaries on the credit of the ship. In an action *in rem* against the ship, in which the defendants intervened:—

**HELD**—that the plaintiffs were entitled to recover, their claim against the ship being paramount to that of the defendants for delivery thereof under their contract with B.

FOONG TAI & Co. v. BUCHHEISTER & Co., [1908]  
[A. C. 458; 99 L. T. 526—P. C.]

2. *Necessaries — Claim for Necessaries Forming Part of General Mercantile Account — Admiralty Court Acts, 1840 (3 & 4 Vict. c. 65), s. 6, and 1861 (24 & 25 Vict. c. 10), s. 5.]*—The Court will not exercise its powers under the Admiralty Court Acts, 1840 and 1861, to enforce payment of a claim for necessaries where these are merely items forming part of a general mercantile account between a shipowner and agent.

**Ownership and Control of Ship—Continued.**

*The Comtesse de Frégerille* (Lush. 329) followed.

THE EL SALTO, 25 T. L. R. 99—Barnes, Pres.

**(c) Mortgage.**

**3. Mortgage and Bills of Exchange Given to Builders—Bills in Hands of Bankers as Holders in Due Course—Builders in Liquidation—Receiver about to Sell Ship—Order Prohibiting any Dealing with a Ship.**—A limited company, the builders of two ships, had taken bills of exchange for the cost of building, together with first mortgages on the ships, and the first bill was about to fall due. The owners of the ships (who had accepted the bills of exchange) were in financial difficulties and the building company had gone into liquidation; the liquidator had taken possession of one of the ships and was negotiating for her sale. Bankers and others, who had discounted most of the bills of exchange and who claimed the benefit of the mortgages as holders, in due course applied *ex parte* for an order under sect. 30 of the Merchant Shipping Act, 1894, restraining the owners, mortgagees, or any other persons from dealing with the ships until further order.

HELD—that an order ought to be made.

LA BLANCA AND EL ARGENTINO, 77 L. J. P. 91  
[—Deane, J.]

**4. Right of Mortgagee to Take Possession—Circumstances Justifying.**—A mortgagee of a ship is entitled to take possession of her, although there has been no actual default under the mortgage, if the mortgagor is working her in such a way as to materially impair the security, *e.g.*, by allowing her to become subject to liens for necessities which he cannot pay for.

THE MANOR, [1907] P. 339; 77 L. J. P. 10;  
[96 L. T. 871; 10 Asp. M. C. 446—C. A.]

**5. Trust—Transfer by Beneficial Owners to Trustee for Particular Purpose—Mortgage by Trustee for Unauthorised Purpose—Form of Mortgage Signed in Blank—Advance by Mortgagee Without Notice—Conflicting Equities—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 24, 31, 56, 57.**—The plaintiffs, who were the owners of certain shares in a ship, transferred them into the name of W. H., the senior partner of H. Brothers, who managed the line to which the particular ship belonged. W. H. was to hold the shares as trustee for the plaintiffs, the object of the transfer being to facilitate the formation of a company which it was proposed should take over the line of ships and the business of H. Brothers; and on the formation of that company W. H. was to transfer the shares to it. Upon the transfer of the shares to W. H. he was registered in respect of them under the Merchant Shipping Act, 1894, as the legal owner thereof, and he continued on the register for a number of years, during which time various attempts were made, but unsuccessfully, to form the proposed company. While W. H. was also registered, his son, who had charge of the financial arrangements of H. Brothers, improperly

arranged for a mortgage of the shares in question to the defendant, and he got W. H. to execute a form of mortgage in blank, which was then handed to the defendant's agent, by whom the document was subsequently filled up, as a mortgage of the shares to the defendant. The money advanced was used in the business of H. Brothers. Neither the defendant nor his agent had any knowledge that W. H. was merely a trustee of the shares for the plaintiffs; they *bona fide* believed that he was the beneficial owner. The defendant then registered his mortgage. Upon learning what had been done by W. H., the plaintiff claimed as against the defendant a declaration that the mortgage was void, and an order that the register should be rectified by the expunging of the entry of the mortgage.

HELD (1)—that as the defendant's agent took the document which purported to be a mortgage when it was in blank, save for the signatures of W. H. and a witness, it was a mere nullity; (2) that by merely allowing W. H. to appear on the register in respect of the shares, the plaintiffs did not hold him out as their agent; and (3) that W. H. could not, without following the statutory provisions of the Merchant Shipping Act, 1894—*i.e.*, by bill of sale—create a charge upon the shares; and (4) that there was no equity entitling the defendant as against the plaintiff to a charge of the shares as security for the money advanced by him.

*Rimmer v. Webster* ([1902] 2 Ch. 163; 71 L. J. Ch. 561; 86 L. T. 491; 50 W. R. 517; 18 T. L. R. 548—Farwell, J.) discussed.

Decision of Bigham, J. (24 T. L. R. 267) reversed.

BURGISS AND OTHERS *v.* CONSTANTINE, [1908] 2 [K. B. 484; 77 L. J. K. B. 1045; 99 L. T. 490; 24 T. L. R. 682; 13 Com. Cas. 299—C. A.]

**6. Unregistered Mortgage—Contract to Sell to Part Owner without Notice—Purchaser to Apply Price in Discharging Vendor's Debt to Ship—Transfer Registered—Mortgagee's Right to Stop Purchase Money—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 33, 56, 57.**—The managing owner of a ship agreed to sell shares in it, of which he was registered owner, to other part owners, who were to apply the purchase money in discharging his debts to the ship, and only pay to him any balance. The shares were at once transferred to the purchasers by registered bill of sale. Before the purchasers could apply or pay the purchase money they received for the first time notice of an earlier, but unregistered, mortgage. The mortgagees claimed the whole purchase money.

HELD—that the mortgagees could not prevent the purchasers from discharging the vendor's debts to the ship. Under sect. 56 of the Merchant Shipping Act, 1894, the vendor as registered owner could "give effectual receipts" for the purchase money, and could validly contract as to its application; therefore the purchasers had a contractual right to apply the money in discharging debts due to the ship in which they were interested.

*Black v. Williams* ([1895] 1 Ch. 408, 421; 64



**Ownership and Control of Ship—Continued.**

*L. J. Ch.* 137; 43 *W. R.* 346; 2 *Manson*, 86—*Vaughan Williams*, (J.) applied.

*BARCLAY & CO., LD. v. POOLE*, [1907] 2 *Ch.* [284; 76 *L. J. Ch.* 488; 97 *L. T.* 632; 10 *Asp. M. C.* 574—*Eady*, J.

**(d) Sale.**

[No paragraphs in this vol. of the Digest.]

**(e) Ownership.**

**7. Possession—Sale—Claim to Proceeds in Court—Evidence—Claimant Contributing Originally Part of Price—Resulting Trust.**—*A.* and the administratrix of *B.* claimed a yacht, of which *B.* had been the registered owner. In an action commenced by the administratrix the yacht was sold by consent and the purchase money paid into Court. The Registrar reported that the yacht had been purchased originally for £1,050, of which *A.* found £500, but that there was no satisfactory evidence that *A.* was to become part owner.

**HELD**—that this raised a presumption in favour of *A.* which had not been rebutted by any evidence, and that there was a resulting trust in favour of *A.*, who was entitled to  $\frac{50}{105}$ ths of the money in Court.

*Dyer v. Dyer* ([1788] 2 *Cox*, 92—*Eyre*, C.B.) applied.

*THE VENTURE*, [1908] *P.* 218; 77 *L. J. P.* 105; [99 *L. T.* 385—*C. A.*

**II. SEAMEN.****(a) Advance of Wages.**

[No paragraphs in this vol. of the Digest.]

**(b) Bonus.**

[No paragraphs in this vol. of the Digest.]

**(c) Effect of Carrying Contraband.**

**8. Refusal to Proceed to Belligerent Port—Conviction—Right to Wages—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 134.**—Seamen agreed to serve on a voyage of specified duration to ports between certain degrees of latitude, ending at a port in Europe. The ship took in a cargo of coal at an English port. War had then been declared between two foreign powers, and coal had been declared contraband of war, and ships carrying it liable to seizure. During the voyage the seamen learned for the first time that they were expected to proceed to a foreign belligerent port within the above limits. On refusing they were left at a British colonial port, where they were convicted of impeding the voyage and imprisoned. In an action by the seamen against the owners of the vessel for wages from the time they were left behind until “final settlement” of their claim, and for damages:

**HELD**—that, as the character of the voyage was changed from an ordinary commercial voyage, for which the seamen had signed on, to one involving increased risk, the seamen were entitled to refuse to continue it, and were therefore entitled to their wages down to the date of the judgment, which was the “final

settlement” of the claim; that the conviction did not operate as an estoppel so as to bar them from making the claim.

Decision of *C. A.* ([1907] 1 *K. B.* 670; 76 *L. J. K. B.* 292; 96 *L. T.* 410; 23 *T. L. R.* 203; 12 *Com. Cas.* 96; 10 *Asp. M. C.* 380) affirmed.

*PALACE SHIPPING Co. v. CAINE*, [1907] *A. C.* [386; 76 *L. J. K. B.* 1079; 97 *L. T.* 587; 23 *T. L. R.* 731; 13 *Com. Cas.* 51; 10 *Asp. M. C.* 529—*H. L.*

**(d) Miscellaneous.**

**9. Offence—“Wilful Disobedience to Lawful Command”—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 225.**—The respondents were seamen employed as firemen on a steamship. On the voyage the respondents were ordered by the engineer to clean out the engine room, but they refused to do so, saying that they were tired, and they made the same excuse to the captain. On an information against them under sect. 225 of the Merchant Shipping Act, 1894, for wilful disobedience to a lawful command, the magistrate found (1) that cleaning the engine room at the time the command to do so was given was necessary work and proper for firemen; (2) that the respondents were then physically capable of performing the work; (3) that they were then tired by their ordinary work; (4) that by not cleaning the engine room when ordered to do so they disobeyed a lawful command, but as he doubted as to the degree of fatigue from which the respondents suffered at the time of non-compliance with the command to clean the engine room he gave the respondents the benefit of the doubt and dismissed the information.

**HELD**—on such findings, that the appeal must be dismissed.

*CAROE v. BAYLISS AND OTHERS*, 72 *J. P.* 525; [25 *T. L. R.* 22—*Div. Ct.*

**(e) Termination of Service.**

**10. Foreign Port—Sending Home—“Port in the United Kingdom Agreed to by the Seamen”—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 186, subs. 2 (a) (b).**—Seamen agreed to serve on a British ship on a voyage from Newport, Mon., to Malta, and to end at a final port of discharge in the United Kingdom or Continent of Europe between the Elbe and Brest, inclusive, and it was agreed that when the seamen were discharged on the Continent as above the master should furnish the means of sending them back to the nearest port in the United Kingdom served by regular steamers, and the seamen agreed to such nearest port as the port in the United Kingdom to which they might be so sent back. The voyage ended at Hamburg, where the crew were discharged. The master paid the expenses of sending the seamen to Hull, which was the nearest port served by regular steamers. The seamen claimed that they were entitled to the expense of conveyance to Newport, the port of shipment.

**HELD**—that the agreement that the seamen should be sent back from the port of discharge to the nearest port in the United Kingdom served

**Seamen—Continued.**

by regular steamers was not inconsistent with the provisions of sect. 186 of the Merchant Shipping Act, 1894, and that the seamen were not entitled to the expense of conveyance to the port of shipment.

Decision of Bray, J. (23 T. L. R. 230) reversed.

ATTORNEY-GENERAL *v.* FARGROVE STEAM [NAVIGATION Co., LD., 24 T. L. R. 430—C. A.]

11. *Home Port—Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), ss. 113, 114 (1), (2), 115 (5).—A seaman signed an agreement at Cardiff for a voyage "to any ports or place, within the limits of 75 degrees north latitude and 60 degrees south latitude, commencing at Cardiff, proceeding thence to Malta, thereafter trading to ports in any rotation, and to end at such port in the United Kingdom or Continent of Europe within home trading limits as may be required by the master." The ship sailed with a cargo from Cardiff to Malta, and from Malta to the Black Sea, where she loaded a cargo for Southampton. On arrival at Southampton she discharged the whole of her cargo. The seaman thereupon demanded his wages on the ground that the voyage was at an end. The master refused, saying that he would have to go on to Cardiff as his port of discharge.

HELD—that, by the agreement the master had the power of determining at what port within home trading limits the voyage was to end; and that the voyage was not at an end when the ship discharged her cargo at Southampton, the master having required the voyage to end at Cardiff.

Decision of C. A. ([1906] P. 103; 75 L. J. P. 31; 54 W. R. 335; 94 L. T. 528; 22 T. L. R. 255; 10 Asp. M. C. 235—C. A.) affirmed.

BOARD OF TRADE *v.* BAXTER—THE SCARSDALE, [[1907] A. C. 373; 76 L. J. P. 147; 97 L. T. 526; 23 T. L. R. 729; 10 Asp. M. C. 525—H. L.]

**III. HIRE OF SHIP.****(a) Detention of Ship.**

See Nos. 15 to 21, *infra*.

**(b) Exceptions in Charter-party.**

12. *Bill of Lading Signed by Time Charterer on Behalf of Shipowner—Construction—“Inaccessible on Account of Ice”—“Any Other Cause”—“Error in Judgment” of Master.*—A time charter contained the following clause: "(12) The captain (although appointed by the owners) shall be under the orders and direction of the charterers as regards employment, agency, or other arrangements; and the charterers hereby agree to indemnify the owners from all consequences or liabilities that may arise from the captain signing bills of lading by the order of charterers or of their agents, or in otherwise complying with the same, and the owners shall be responsible for the full, true and proper delivery of the cargo. The stevedore shall be employed and paid by the charterers, but this shall not relieve the owners from responsibility as to proper stowage, which must be controlled

by the captain, who shall keep a strict account of all cargo loaded and discharged as usual."

The time charterers signed a bill of lading "for the captain and owners," and it contained the following conditions and exceptions: "(2) Error in judgment, negligence or default of . . . master . . . or other persons in the service of the ship, whether in navigating the ship or otherwise"; "(4) Should a port be inaccessible on account of ice, blockade or interdict, or should entry and discharge at a port be deemed by the master unsafe in consequence of war, disturbance or any other cause, it shall be competent for the master to discharge goods intended for such port on the ice or at some other safe port or place, at the risk and expense of the shippers, consignees or owners of the goods; and upon such discharge the ship's responsibility shall cease."

HELD—(1) that the signature of the time charterers to the bill of lading bound the shipowners just as if the master had signed it by direction of the charterers; (2) that "inaccessible" meant inaccessible within a reasonable time after the ship arrived; (3) that the words "error in judgment of the master" did not include his mistake as to the construction of the bill of lading; and (4) that the words "or other cause" must be construed in accordance with the *ejusdem generis* rule, and did not include ice.

Decision of Channell, J. ([1908] 1 K. B. 185; 77 L. J. K. B. 135; 13 Com. Cas. 82) affirmed.

TILLMANN'S & Co. *v.* S.S. KNUTSFORD, LD., [[1908] 2 K. B. 385; 77 L. J. K. B. 778; 24 T. L. R. 454; 13 Com. Cas. 244—C. A.]

Affirmed, [1908] A. C. 406; 77 L. J. K. B. 977; 99 L. T. 399; 24 T. L. R. 786; 13 Com. Cas. 334—H. L.]

13. *Damage to Cargo—Liability Excepted—Increase of Damage Caused by Unseaworthiness—Liability of Shipowner for all Damage.*—The owner of a ship which leaves port unseaworthy is not liable to a cargo owner for all damage due to "excepted" perils, but only to such as is proved to be due to the unseaworthiness.

A ship during the currency of a charter-party collided with a pierhead while going into dock, and the closet pipe was in consequence cracked, letting water into the between decks and damaging the cargo stowed there. The shipowners were exempted by the charter-party from liability for such damage. There were old scupper holes in the between-deck waterways from which the pipes to the bilges had been detached, and which had not been properly plugged. Owing to this defect the water got into the lower hold and did damage to the cargo there. The cargo owner claimed to recover the whole of the damage upon the ground, that, as the ship was unseaworthy at the commencement of the voyage, the exceptions in the charter-party were gone.

HELD—that the cargo owner could only recover in respect of the damage to the cargo in the lower hold, which was caused by the unseaworthiness.

Joseph Thorley, Ltd. *v.* Orchis Steamship Co., Ltd. ([1907] 1 K. B. 660; 76 L. J. K. B. 595; 96



**Hire of Ship—Continued.**

L. T. 488 ; 23 T. L. R. 338 ; 12 Com. Cas. 251—C. A.) distinguished.

THE EUROPA, [1908] P. 84 ; 77 L. J. P. 26 ; 98 [L. T. 246 ; 24 T. L. R. 151—Div. Ct.

14. *Exemption from Liability for Unseaworthiness if Reasonable Means Taken to Prevent it—Exemption in Respect of Damage "Capable of being Covered by Insurance, or which has been Wholly or in Part Paid for by Insurance"—Vessel Unseaworthy at Commencement of Voyage—Neglect of Shipowners.*—By a charter-party for the carriage of frozen meat shipowners were to be exempted from liability for unseaworthiness or unfitness provided reasonable means were taken to provide against unseaworthiness, and the shipowners were not to be liable for any damage to goods "which is capable of being covered by insurance, or which has been wholly or in part paid for by insurance" ; and at the end of a long clause which contained numerous exceptions, it was provided that the above-mentioned exceptions should apply, whether the same be directly or indirectly caused or should arise by reason of the neglect of certain persons for whose defaults the shipowners would otherwise be liable. In an action claiming damages against the shipowners for failing to carry the cargo safely, the jury found that the ship at the commencement of the voyage was, by reason of a defect in the refrigerating plant, unfit to carry her cargo safely to its destination ; that reasonable means were not taken to prevent such unfitness ; and that the neglect was the neglect of the shipowners, their officers and agents. The charterers were partly covered by insurance, and were paid the insurance moneys.

HELD—that the clause as to the insurance was not sufficiently clear to exempt the shipowner from liability for failure to provide a seaworthy ship and to take reasonable care.

Decision of C. A. ([1907] 1 K. B. 769 ; 76 L. J. K. B. 411 ; 96 L. T. 402 ; 23 T. L. R. 302 ; 12 Com. Cas. 210 ; 10 Asp. M. C. 390) affirmed.

NELSON LINE (LIVERPOOL), LD. v. JAMES [NELSON AND SONS, LD., [1908] A. C. 16 ; 77 L. J. K. B. 82 ; 97 L. T. 812 ; 24 T. L. R. 114 ; 52 Sol. Jo. 170 ; 13 Com. Cas. 104 ; 10 Asp. M. C. 581—H. L.

15. *Ship—"Hindrances of what kind soever" Ejusdem generis Rule not Applicable—Hindrance beyond Control of Charterers—Congestion of Shipping in Dock.*—By a charter-party the charterers agreed to load in the plaintiff's ship a cargo of coals at Grimsby within 84 running hours, time to count when written notice of readiness to receive the cargo was given ; and "the parties hereto mutually exempt each other from all liability arising from frosts, floods, strikes, lock-outs of workmen, disputes between masters and men, and any other unavoidable accidents or hindrances of what kind soever beyond their control, preventing or delaying the working, lading, or shipping of the said cargo occurring on or after the date of this charter until the actual completion of the loading." Grimsby Dock was under the control of a

railway company, and there were six tips there at which ships loading coal were bound to load, and by the rules of the dock ships had to take their turn at the berths. The plaintiff's ship arrived on July 18th, and written notice of readiness to load was given. Owing, however, to the large number of ships which were waiting to load in turn before the plaintiff's ship, the latter did not get to a berth under a tip until July 27th, when she loaded her cargo within 84 hours. The plaintiff claimed demurrage.

HELD—that the words "any other unavoidable accidents or hindrances of what kind soever" were not to be read as *ejusdem generis* with the preceding specified hindrances, but were general in their meaning ; that by reason of the number of ships in the dock prior in turn to the plaintiff's ship there was a hindrance preventing or delaying the loading within the exception in the charter-party ; and that therefore the plaintiff was not entitled to demurrage.

Decision of C. A. (24 T. L. R. 488) affirmed.

LARSEN v. SYLVESTER & Co., [1908] A. C. 295 ; [77 L. J. K. B. 993 ; 99 L. T. 94 ; 24 T. L. R. 640 ; 13 Com. Cas. 328—H. L.

16. *"Obstruction"—Cargo Delayed by Strike on Railway—Strike Occurring before Arrival of Ship—Delay Caused by Obstruction in Docks—Congestion of Shipping.*—By a charter-party, cargo was to be loaded on the plaintiffs' ship at the rate of 200 tons per running day, and time for loading was to commence to count 12 hours after written notice given by the master on working days between 9 a.m. and 6 p.m. of the ship's readiness to receive cargo, and all time on demurrage over and above the lay days to be paid for at a certain rate ; and if the cargo could not be loaded by reason of riots or any dispute between masters and men, occasioning a strike of railway employés or other labour connected with the working, loading, or delivery of the cargo, or through obstructions on the railways or in the docks or other loading places beyond the control of the charterers, the time lost was not to be counted as part of the lay days. The ship arrived at the port of loading (Bahia Blanca) on February 24, 1905, and her master gave notice of readiness to load at 5.30 p.m. on that day. At the time the port was crowded with vessels, the congestion having arisen from a strike among railway employés which had occurred in the previous month and a military insurrection which had occurred earlier in February, during which the insurgents laid hands on the railway. Both the strike and the insurrection were over before the plaintiffs' ship arrived. The cargo intended for the ship was delayed through the above causes. The ship did not reach the berth and begin to load until March 30th. In an action against the charterers for demurrage :—

HELD—that, as the cargo was delayed on the railway by reason of the strike and so prevented from being loaded, the charterers were protected by the strike clause.

*Semble*, the cargo was prevented from being loaded by an "obstruction" beyond the control of the charterers, owing to the ship not being



**Hire of Ship—Continued.**

able to get to her berth by reason of the other vessels being before her in turn to load ;

*Semble*, also, that, subject to the above, the lay days would have commenced to run at 5.30 a.m. on February 25th.

Decision of Bigham, J. (24 T. L. R. 280 ; 13 Com. Cas. 161) affirmed.

LEONIS STEAMSHIP CO. v. JOSEPH RANK, LD.  
[ (No. 2), 99 L. T. 513 ; 24 T. L. R. 749 ; 13 Com. Cas. 295—C. A.

*See also* No. 28, *infra*.

**(c) Loading and Discharge of Cargo.**

17. "*Hands Striking Work*" — *Regulations of Co-operation Societies of Labour—Whether within Exception.*—By a charter-party cargo was to be discharged at a certain rate "except in cases of riot or any hands striking work." On arrival at the port of discharge the vessel for some time lay stern to a quay until there was space for her to lie broadside on. No cargo was discharged during this period owing to a declaration by labour societies that steamers should not be discharged whilst moored end on. Such declaration had been acted on for two years.

HELD—that the delay did not fall within the exception.

HORSLEY LINE, LD. v. ROECHLING BROS.,  
[1908] S. C. 866—Ct. of Sess.

18. *Place of Loading—Charter-party—Port—Arrived Ship—Implied Right to Name Berth Commencement of Lay Days.*—Where under a charter-party a ship has to proceed to and load or deliver at a named place, which is an area larger than a berth, in some part or in several parts of which the ship can discharge, the lay days commence as soon as the shipowner has placed the ship at the disposal of the charterer in that named place as a ship ready so far as she is concerned to load or discharge, notwithstanding that the charterer has not named, or has been unable to name, a berth at which, in fact, the discharge can take place.

Where, however, the charter-party fixes, or the charterer is entitled by express words in the charter-party to name, a berth for the discharge, the lay days do not begin to run until the ship has reached the berth named by him.

*Pyman v. Dreyfus* (1889) 24 Q. B. D. 152 ; 59 L. J. Q. B. 13 ; 61 L. T. 724 ; 38 W. R. 447 ; 6 Asp. M. C. 444—Div. Ct.] followed.

Decision of Channell, J. ([1907] 1 K. B. 344 ; 76 L. J. K. B. 342 ; 96 L. T. 458 ; 23 T. L. R. 215 ; 12 Com. Cas. 173 ; 10 Asp. M. C. 398) reversed.

LEONIS STEAMSHIP CO., LD. v. JOSEPH RANK, [LD., [1908] 1 K. B. 499 ; 77 L. J. K. B. 224 ; 24 T. L. R. 128 ; 52 Sol. Jo. 621 ; 13 Com. Cas. 136—C. A.

19. *Sundays Excepted—Total Time for Loading and Discharge Exhausted—Calculation of Days on Demurrage.*—A charter-party provided that the cargo was "to be shipped at the rate of 350 tons per clear running days of twenty-four consecutive hours, Sundays . . . excepted, and to

be discharged on the same terms," that the charterers should be allowed "to average the days for loading and discharging to avoid demurrage," and that the time for discharging should be "from 6 a.m. after ship is reported and in every respect ready and in free pratique." The vessel had exhausted the total time allowed for loading and discharging at the port of loading, and was an arrived ship at the port of discharge at 2 p.m. on Saturday. The charterers disputed the plaintiffs' claim for demurrage in respect of the forty hours from 2 p.m. on Saturday to 6 a.m. on Monday.

HELD—that the clause in the charter-party only operated during the time allowed for loading and discharge and did not extend the time after it was once exhausted.

THE VALHALLA, *Times*, July 27th, 1908—Div. Ct.

20. "*Sundays and Holidays Excepted*" — *Loading on Excepted Days—Excepted Days counting as Working Days—Despatch Money—"Days Saved in Loading."*—A charter-party contained the following provisions : "The service . . . is, subject as hereinafter provided, to be a two-weekly one . . . having the sailings at intervals of fourteen days . . . and to last for one year." "Seven weather working days (Sundays and holidays excepted) to be allowed by owners to charterers for loading," and for any time beyond that period the charterers to pay demurrage at the rate of £40 per day, and "for each clear day saved in loading the charterers shall be paid or allowed by the owners the sum of £20." The owners were to place the ships at the charterer's disposal at the loading berth chosen by the charterers, and to give them notice of readiness to load.

The charterers loaded on two days which were holidays. There was no express agreement between the shipowners and the charterers as to whether those days were to be treated as working days, and there was no evidence on whose suggestion or on what terms the work was done.

HELD—(1) that the obligation to begin loading after berthing and notice was subject to a condition that vessels should be tendered at such times as suited two-weekly sailings with fourteen days intervals ; (2) that the charterers having loaded in days less than the lay days were entitled to despatch money for days saved in loading.

Decision of C. A. ([1907] 2 K. B. 705 ; 77 L. J. K. B. 97 ; 97 L. T. 661 ; 23 T. L. R. 656 ; 10 Asp. M. C. 544) reversed on the latter point.

JAMES NELSON AND SONS, LD. v. NELSON LINE [LIVERPOOL], LD., [1908] A. C. 108 ; 98 L. T. 322 ; 24 T. L. R. 315 ; 52 Sol. Jo. 278 ; 13 Com. Cas. 235—H. L.

21. "*Weather Working Days*" — *Delay Caused by Surf—Customary to Discharge from Lighters on to Beach.*—By a charter-party a ship was to load a cargo of coals for Valparaiso and there deliver the same in the usual and customary manner alongside such wharf, vessel, steamer,

**Hire of Ship—Continued.**

floating dock, hulk, launch, or pier, where she could always lie afloat, as directed by the consignees, delay by storms, surf, and weather not to count in the time allowed for discharging; the cargo to be taken delivery of from alongside ship at port of discharge at the average rate of not less than 250 tons per weather working day (Sundays and holidays excepted), with ten days allowed on demurrage at the rate of 4*d.* per net register ton per day. At Valparaiso it was usual to discharge into lighters, and the latter discharged on to the beach. By custom "surf days" were not "weather working days," and the port captain decided which days were "surf days." The ship discharged into lighters which discharged on to the beach. Certain days were declared by the port captain to be "surf days," but during all those days discharge into the lighters and from them on to the beach took place. The consignees claimed that "surf days" ought not be counted in the lay days.

**HELD**—that the words "weather working days" in their natural sense meant days on which the work of discharge was not prevented by bad weather and that that meaning was not controlled by the custom alleged; that, as the consignees were able to take delivery during the surf days, those days were to count as lay days; but that, as the surf caused delay in discharging, the time so lost was not to count in the lay days, the provision as to delay by surf not being confined to delay in discharging into the lighters.

**BENNETTS & Co. v. J. AND A. BROWN.** [1908] 1 K. B. 490; 77 L. J. K. B. 515; 98 L. T. 281; 24 T. L. R. 199; 52 Sol. Jo. 160; 13 Com. Cas. 110—Walton, J.

**(d) Miscellaneous.**

**22. Bunker Coal—Right of Shipowner to put Bunker Coal on Board—Coal for Subsequent Voyage—Expense of Lightening Ship to Enter Port.**—By a charter-party a ship was to load in Australia a full and complete cargo, which the charterers bound themselves to provide, not exceeding what she could reasonably stow and carry over her tackle, apparel, provisions and furniture, and to proceed to certain ports in South Africa, "and there lighten at receivers' expense as much of the cargo as may be found necessary to allow steamer to enter at all times of high water such port according to its custom." The ship arrived at Durban in South Africa, and the charterers lightened her there so as to enable her to cross the bar at East London, her next port. The shipowner, however, put 800 tons of bunker coal on board, and in consequence the ship on arrival at East London had to be further lightened to enable her to enter the port. Her last port in South Africa was Algoa Bay, and 120 tons of coal would have carried her from Durban to that port and back to Durban or Cape Town, where a new voyage to Australia was to begin. The 800 tons of coal put on board at Durban was mainly for the purpose of the new voyage.

**HELD**—that the shipowner was only entitled to put sufficient coal on board at Durban to

enable the chartered voyage to be completed, the rest of the ship being at the charterer's disposal, and not to put coal on board for a future voyage, and that therefore he was liable to pay the expense of lightening the ship at East London.

**Decision of Kennedy, J.** ([1906] 1 K. B. 572; 75 L. J. K. B. 415; 95 L. T. 108; 22 T. L. R. 465; 10 Asp. M. C. 268; 11 Com. Cas. 147) affirmed.

**DARLING AND SONS v. RAEBURN.** [1907] 1 K. B. [846; 76 L. J. K. B. 570; 96 L. T. 437; 23 T. L. R. 354; 12 Com. Cas. 262; 10 Asp. M. C. 429—C. A.]

**23. Charterer to Pay "Port Charges"—Pilotage Dues—Lay Days—Sundays and Holidays Excepted—Loading on Sunday and Holiday—Shifting from Port to Port.**—By a clause in a charter-party the charterers had the option of using additional neighbouring loading ports, paying all "port charges."

**HELD**—that pilotage dues did not come within the words "port charges," and, therefore, were not payable by the charterers.

By the charter-party the charterers were allowed thirteen running days, Sundays and holidays excepted, for loading cargo.

**HELD**—that from the fact that loading was proceeded with on a Sunday and also on a holiday, the inference was that the parties agreed to treat both the Sunday and the holiday as lay days.

The charterers had also the option of shifting from one port to another, the time so spent to be included in the lay days.

**HELD**—that a Sunday or holiday so spent was to be counted.

**WHITTALL & Co. v. RAHTKEN'S SHIPPING CO.,** [LD., [1907] 1 K. B. 783; 76 L. J. K. B. 538; 96 L. T. 885; 23 T. L. R. 346; 12 Com. Cas. 226; 10 Asp. M. C. 471—Bray, J.]

**24. Spanish Export Tax—Liability to Pay.**—By a charter-party a ship was chartered to proceed to a Spanish port and load a cargo of iron rails, "Spanish Customs dues on cargo to be paid by steamer not exceeding 1*s.* per ton." There was a Spanish tax, called a transport tax, levied on goods carried over sea or imported or exported through the land customs houses, and this tax was payable by the shipowner to the Spanish Government, and was calculated on the weight of the cargo. There was no other tax on iron rails.

**HELD**, by the Lord Chancellor, Lord Macnaghten, Lord James of Hereford, Lord Atkinson, and Lord Collins (Lord Ashbourne and Lord Robertson dissenting), that the transport tax was not a "customs due on cargo" within the meaning of the charter-party, and that therefore the shipowners were bound to pay it, although it exceeded 1*s.* per ton.

**Decision of C. A.** (24 T. L. R. 133) affirmed.

**LONDON TRANSPORT CO., LD. v. BESSLER,** [WAECHTER & Co., LD., 24 T. L. R. 531; 52 Sol. Jo. 442—H. L.]



**Hire of Ship—Continued.****(e) Payment of Freight.**

**25. Lien for Freight and Dead Freight—Liability of Holders of Bills of Lading.**—By a clause in a charter-party a vessel was to have a lien on the cargo for recovery of all bill of lading freight, dead freight, etc. By the bills of lading the consignees, as well as "performing all other conditions and exceptions as per charter-party," were to pay freight, "per the rate of freight as per charter-party per ton of 2,240 lbs. gross weight delivered in full . . . 6d. less if ordered to a direct port on signing last bill of lading." The vessel was ordered to a direct port.

By the charter-party the vessel was not to earn more freight than she would with a full cargo of wheat or maize in bags, but the charterers might ship other lawful merchandise, in which case freight was to be paid on the vessel's dead-weight capacity for wheat or maize in bags at the agreed rate of 12s. 6d. per ton, subject to the reduction of 6d. if the vessel were ordered to a direct port. The charterers failed to complete the loading. On arrival of the vessel, the owners claimed a lien on the cargo for freight and dead freight against the holders of the bills of lading.

**HELD**—that the owners were only entitled to recover freight at the rate of 12s. per ton delivered, and were not entitled to succeed in their claim with respect to dead freight.

RED "R." STEAMSHIP CO. *v.* ALLATINI  
[BROS. AND OTHERS, 126 L. T. Jo. 144  
—Bray, J.]

**(f) Period of Hire.**

**26. Hire of Ship—Payment—Construction of Charter-party.**—By a charter-party the defendants hired the plaintiffs' steamship for six calendar months commencing from the day when she was placed at the disposal of the defendants at a certain port, the defendants to pay for the use and hire of the vessel at the rate of £675 per calendar month, commencing on and from the day of her delivery, and at and after the same rate for any part of a month, the hire to continue from the time specified for terminating the charter until her re-delivery to the plaintiffs at a port in the United Kingdom; the payment of hire to be made as follows:—Half-monthly in advance except for the last half-month, which time was to be estimated and paid in advance up to such time as the steamer was expected to be re-delivered; and the defendants were to have the option of continuing the charter for two further periods of six calendar months. The vessel was placed at the disposal of the defendants on May 25th, 1907, and the six months would expire on November 25th. On November 14th the defendants re-delivered the vessel to the plaintiffs, who, however, refused to accept re-delivery, and the plaintiffs claimed for the last half-month's hire. The defendants paid into Court the proportionate part of the last half-month's hire up to November 14th.

**HELD**—that the plaintiffs were entitled to the whole of the last half-month's hire.

Decision of Bigham, J. (24 T. L. R. 369; 13 Com. Cas. 184) reversed.

REINDEER STEAMSHIP CO. *v.* FORSLIND AND  
[SON, 24 T. L. R. 529; 52 Sol. Jo. 425; 13 Com. Cas. 214—C. A.]

**27. Non-Payment of Hire—Withdrawal of Ship.**—A charter-party provided for the hire to be paid in cash "monthly in advance . . . in default of such payment . . . the owners shall have the faculty of withdrawing" the vessel.

On September 11th a month's hire became due. On October 1st it was still unpaid, and the owners gave notice that they withdrew the vessel, which was then at sea.

On October 2nd the owners were paid and the vessel arrived.

On October 4th the master by the owners' orders withdrew the vessel.

**HELD**—that there was no withdrawal until October 4th; that on that date there was no justification for withdrawal, and that the ship-owners were liable in damages for breach of the charter-party.

THE LANGFOND *v.* CANADIAN FORWARDING  
[AND EXPORT CO., 96 L. T. 559; 10 Asp. M. C. 414—P. C.]

**(g) Warranties.**

[No paragraphs in this vol. of the Digest.]

**IV. INCORPORATION OF CHARTER-PARTY IN BILL OF LADING.**

**28. Bill of Lading Incorporating Charter-party—Strike Preventing or Delaying the Discharge—Strike Intervening before Time of Discharging Expired—Delay in Discharge up to Time of Strike.**—By a charter-party cargo was to be discharged at the average rate of 500 tons per day, but "in any case of strikes, lock-outs, civil commotions, or any other causes or accidents beyond the control of the consignees which prevent or delay the discharging, such time is not to count unless the steamer is already on demurrage." Before the lay days had expired a strike occurred which delayed the discharge. Owing to the default of the charterer, who was also the consignee, the cargo had not been discharged at the stipulated rate up to the time of the strike, with the result that the discharge could not have been completed within the time allowed, even if there had been no strike. In an action to recover demurrage:—

**HELD**—that, as the charterer by his conduct had made it impossible to discharge within the time allowed, he was not entitled to rely upon the strike as an answer to the claim; and that the charterer was liable to pay demurrage in respect of the time actually occupied in the discharge beyond the time which would have been occupied if he had not made default in discharging before the strike took place.

ELSWICK STEAMSHIP CO. *v.* MONTALDI, [1907]  
[1 K. B. 626; 76 L. J. K. B. 672; 96 L. T. 845; 23 T. L. R. 322; 12 Com. Cas. 240; 10 Asp. M. C. 456—Bigham, J.]



### Incorporation of Charter-Party in Bill of Lading—Continued.

**29. Charterers' Duty to Present Proper Bills of Lading—Omission of Negligence Clause by Charterer—Loss by Negligence—Shipowners thus rendered Liable to Indorsee of Bill of Lading—Liability of Charterer to Shipowner.]**—The plaintiffs chartered a ship to the defendants under a charter-party which exempted the plaintiffs as owners from liability in respect of accidents of navigation, even if due to the negligence of the master, and provided that the master was to sign clean bills of lading without prejudice to the charter-party. The defendants presented to the master a bill of lading which in fact omitted the negligence clause, but which included the words "freight and other conditions as per charter-party," and it was signed by the master. The ship having been totally lost, the indorsees of the bill of lading brought an action against the plaintiffs in which they proved negligent navigation and, in the absence of a negligence clause, recovered judgment. The plaintiffs then brought an action against the defendants, claiming to recover the amount which they had to pay to the cargo owners.

**HELD**—that, since the contract between the owners and charterers was that the former were not to be liable for the master's negligence, the charterers must indemnify them. It was the charterers' duty to present to the master bills of lading not inconsistent with the charter-party.

Decisions of Phillimore, J. ([1906] 2 K. B. 792; 75 L. J. K. B. 878; 95 L. T. 614; 22 T. L. R. 821; 10 Asp. M. C. 310; 12 Com. Cas. 38); and the C. A. ([1907] 1 K. B. 809; 76 L. J. K. B. 550; 96 L. T. 429; 23 T. L. R. 271; 10 Asp. M. C. 416) affirmed.

**KRUGER & Co., LD., v. MOEL TRYVAN SHIP Co.,** [1907] A. C. 272; 76 L. J. K. B. 985; 97 L. T. 143; 23 T. L. R. 677; 13 Com. Cas. 1; 10 Asp. M. C. 465—H. L.

### V. CARRIAGE OF GOODS.

See also **BILLS OF LADING**; **BANKRUPTCY**, No. 14; **CARRIERS**, No. 1.

#### (a) Deviation of Ship.

**30. Limitation of Liability in Bill of Lading.]**—A bill of lading for the carriage of goods from Cyprus to London exempted the shipowners from liability for loss or damage arising from any act, neglect or default of . . . stevedores . . . in the management, loading, stowing, discharging, or navigation of the ship, or otherwise. The ship deviated from her voyage, and on arrival in London the goods were damaged by the stevedores in unloading them.

**HELD**—that the deviation deprived the shipowners of the benefit of stipulations in the bill of lading limiting their liability, though the damage did not occur during, or owing to, the deviation.

*Balian v. Joly, Victoria & Co.* (1890) 6 T. L. R. 345—C. A.) followed.

Decision of Channell, J. ([1907] 1 K. B. 243;

76 L. J. K. B. 106; 23 T. L. R. 89; 12 Com. Cas. 51) affirmed.

**JOSEPH THORLEY AND SONS, LD. v. ORCHIS** [STEAMSHIP Co., LD., [1907] 1 K. B. 660; 76 L. J. K. B. 595; 96 L. T. 488; 23 T. L. R. 338; 12 Com. Cas. 251; 10 Asp. M. C. 431—C. A.]

#### (b) Discharge of Cargo.

**31. Wheat in Sacks—Custom of Port of Belfast—Average Rate of Discharge—Whipping.]**—There is no binding custom of the port of Belfast that a steamship laden with bags of wheat should not be discharged at a greater rate than 500 bags a day. A custom that cargoes of Bombay wheat in bags should be discharged by "whipping" and not by "hoisting" would even if supported by evidence be unreasonable.

**CLYDESDALE SHIPOWNERS CO., LD. v. GAL-LAHER,** [1907] 2 I. R. 578—C. A.  
Affirmed, [1908] 2 I. R. 482—H. L.

**32. Unloading of Vessel—"As Fast as Steamer can Deliver."]**—By a bill of lading for sugar shipped from the West Indies to Greenock, the goods were to be "received by the consignee from the ship's tackles as fast as the steamer can deliver, any custom of the port to the contrary notwithstanding, and all charges incurred after being discharged necessary for the steamer's quick dispatch to be paid by the owner or consignee of the goods."

**HELD** (*dissentiente* Lord Stormonth Darling)—that the ship was entitled to put the cargo out on to the quay as fast as she could; that the consignees, provided they had fair notice of the intended rate of discharge, were bound, whatever might be the custom of the port as to taking delivery, to make arrangements for having the cargo removed as soon as it was put out; and that if they failed to do so, thus blocking the discharge, the ship might employ men to clear the block and recover the cost of so doing.

**CROWN STEAMSHIP CO., LD. v. LEITCH,** [1907] S. C. 506—Ct. of Sess.

See also No. 39a, *infra*.

#### (c) Documents of Title.

[No paragraphs in this vol. of the Digest.]

#### (d) Exceptions in Bill of Lading.

**33. Negligence of Shipowner.]**—The plaintiffs shipped two packages of goods in the defendants' ship for conveyance to Buenos Ayres under a bill of lading which provided that the "master, owners, or agents of the vessel . . . shall not be accountable to any extent for bullion . . . nor for any other goods of whatever description beyond the amount of £2 per cubic foot for any one package," unless the value was declared and extra freight paid. No declaration was made or extra freight paid on the goods. The defendants failed to deliver the goods at Buenos Ayres, and it was never ascertained how or when they had disappeared. In an action to recover their value:—

**HELD**—that the mere non-delivery was *prima facie* evidence of neglect, but that the above

**Carriage of Goods—Continued.**

clause relieved the defendants from liability for loss beyond £2 per cubic foot for each package, even if the loss was occasioned by their negligence.

**BAXTER'S LEATHER CO., LD. v. THE ROYAL [MAIL STEAM PACKET CO., [1908] 1 K. B. 796; 77 L. J. K. B. 417; 24 T. L. R. 304—Bigham, J.**

Affirmed, [1908] 2 K. B. 623; 77 L. J. K. B. 988; 99 L. T. 286; 24 T. L. R. 537—C. A.

**34. Negligence of Shipowners' Servants.]—**By a bill of lading sugar was to be carried from Bremen to London on board the defendants' steamship, the bill of lading containing exceptions of (1) "the act of God . . . and all accidents, loss, and damage whatsoever from defects in hull, tackle, apparatus, machinery, boilers, steam, and steam navigation, or from perils of the seas . . . or from any act, neglect, or default whatsoever of the pilot, master, officers, engineers, crew . . . in the management . . . or navigation of the ship or otherwise, and the owners being in no way liable for any consequences of the causes before mentioned"; (2) "It is agreed that the exercise by the shipowners or their agents of reasonable care and diligence in connection with the ship, her tackle, machinery, and appurtenances shall be considered a fulfilment of every duty, warranty, or obligation, and whether before or after the commencement of the said voyage."

The sugar was damaged by water getting into it through a three-way cock in a pipe, which was not carefully turned and so admitted the water. In an action to recover for the damage the Judge came to the conclusion that the chief engineer, who had been at the building yard superintending the machinery being put together in the ship, did not know that the cock opened three ways.

**HELD**—that this was neglect by the chief engineer within clause 2 of the bill of lading, and the defendants were liable.

**THE SCHWAN, [1908] P. 356; 24 T. L. R. 895—[Deane, J.]**

**35. Negligence of Servants or Agents of Owners—"Management, Loading, Stowing, Discharging, or Navigation of the Craft or Otherwise."]**—The plaintiff shipped 312 baskets of plums to be carried from Hamburg to London in a ship belonging to the defendants. By the terms of the bill of lading the goods were to be discharged at the shipowners' expense, but at merchant's risk, and were to be delivered to the plaintiff's agent subject to the exceptions and conditions set out in the bill of lading. One of these exceptions exempted the shipowners from liability "for all accidents, loss, damage whatsoever arising from any act, neglect, or default whatsoever of the pilot, master, officers, engineers, crew, stevedores, servants, or agents of the owners in the management, loading, stowing, discharging, or navigation of the ship or other craft or otherwise." The 312 baskets were duly discharged from the ship, but, owing, as found by the jury, to the default of the persons in charge of the wharf, 213 baskets were delivered to the wrong persons, and the plaintiff's agent never received them.

In an action by the plaintiff against the shipowners for damages:

**HELD**—that the defendants were protected by the exception in the bill of lading.

**SMACKMAN v. GENERAL STEAM NAVIGATION [CO., 98 L. T. 396; 13 Com. Cas. 196—Phillimore, J.]**

**(e) Freight.**

See No. 25, *supra*.

**(f) Miscellaneous.**

**36. Cargo Damaged by Wet—"Wheat"—Whole Nature of Article Altered—Merchantable as Damaged Wheat.]—**On May 2nd a vessel with a cargo of wheat from Australia put into Queens-town for orders, according to the terms of the charterparty. While there and before the orders were given she was on May 2nd damaged and grounded, and the cargo got wet. A good offer for the damaged wheat was obtained at Queens-town, but the defendants, the indorsees of the bill of lading, would not agree, and on May 7th named, under the provisions of the charter-party and bill of lading, North Shields as the port of discharge. On May 9th the defendants, desiring to treat the damage at Queenstown as a total loss, gave notice of abandonment, which the underwriters refused to accept. The cargo was carried to North Shields partly in the vessel and partly in coasting vessels. The plaintiffs sued for the freight due. The defence raised was that the cargo shipped was not delivered, the wheat having lost its use as human food, though it might be used for the purposes of cattle food. Evidence was brought by the plaintiffs to show that wheat was imported from Manitoba and sold as "feed wheat," which was not useful for bread purposes.

**HELD**—that the cargo delivered was damaged wheat, and merchantable as wheat which had been kiln-dried or wheat which had been damaged, that it had not lost its merchantable character as wheat, and that what was delivered was the thing that had been shipped.

**PALACE SHIPPING CO. v. SPILLERS AND [BAKERS, LD., Times, May 18th, 1908—Walton, J.]**

**37. Indorsement of Bill of Lading to Agent—Special Property—Right to Possession as Against Execution Creditor of Consignor—Intention.]—**The effect of the indorsement of a bill of lading depends upon the intention of the parties. Accordingly, where a bill of lading is indorsed to an agent it confers no property in the goods, but only clothes the agent with authority to take possession for the consignees.

**BURGOS v. NASCIMENTO, 53 Sol. Jo. 60; [1908] [W. N. 237—Eve, J.]**

**(g) Short Delivery.**

[No paragraphs in this vol. of the Digest.]

**(h) Through "Bill of Lading."**

**38. Land and Sea Carriage—Lien for Freight Paid for Land Carriage—Non-arrival of Goods**

**Carriage of Goods—Continued.**

*at Port of Destination.*—Goods were consigned from an inland town in America by railway to Montreal and thence by steamer to London under a through bill of lading at an inclusive rate of freight. The bill of lading contained conditions with respect to the service until delivery to the steamer at Montreal, one condition being that that part of the contract was executed and all liability thereunder terminated on delivery to the steamer, and the inland freight charges were to be a first lien due and payable by the steamship company. The bill of lading also contained conditions with respect to the service after delivery at Montreal until delivery in London, one condition being that the property covered by the bill of lading was subject to all conditions expressed in the regular forms of bills of lading in use by the steamship company. This latter form of bill of lading contained a clause that when goods were carried at a through rate of freight the inland proportion thereof was due on delivery of the goods to the ocean steamship, and the shipowner was to have a first lien on the goods in whole or in part until payment thereof. The goods were delivered to the steamer, and the steamship company paid the inland freight due for the railway carriage. On the voyage to London the steamer ran ashore, but the cargo was salvaged. Part of the goods were damaged and were sold, and the rest were transhipped and brought to London. The steamship company claimed, in addition to the freight payable on the goods delivered in London, a lien on the goods for the inland freight paid by them for the railway carriage in respect of the goods not delivered in London.

**HELD**—that the steamship company were entitled to the lien claimed.

Decision of the Div. Ct. (75 L. J. P. 70; 95 L. T. 395; 23 T. L. R. 564; 10 Asp. M. C. 281) affirmed.

**THE HIBERNIAN; TASKER & CO. v. ALLEN**  
[Bros. & Co., [1907] P. 277; 76 L. J. P. 122;  
97 L. T. 363; 23 T. L. R. 519; 10 Asp. M. C.  
501—C. A.]

**(i) Warranties.**

[No paragraphs in this vol. of the Digest.]

**VI. DEMURRAGE.**

*See also Nos. 15—21, 31, 32, supra.*

**(a) Averaging Days.**

[No paragraphs in this vol. of the Digest.]

**(b) Colliery Guarantee.**

[No paragraphs in this vol. of the Digest.]

**(c) Commencement of Lay Days.**

**39. "Reported at Custom House"**—*Reported before being Berthed—Computation—Fractions of Days.*—By a charter-party a ship was to proceed to Savona and there discharge, "time for discharging to commence on being reported at the custom house." She anchored in the roads there on Tuesday morning, and was reported at the custom house at 3 p.m.; but had to wait till a later date before she could enter the harbour, and till a still later date before she got a berth.

**HELD**—that time ran from the actual reporting at the custom house, though the vessel was not within the harbour.

The charter-party provided, "cargo to be received at the rate of 400 tons per weather working day. . . . Demurrage at the rate of £25 per running day." The cargo was 2,850 tons.

**HELD, ALSO**—(1) that the charterers were only entitled to lay days amounting to seven days and three hours and not eight full days; and (2) that the vessel having been on demurrage for six days and one-and-a-half hours, the owners were only entitled to demurrage for that period and not for seven full days.

**HORSLEY LINE, LD. v. ROECHLING BROS.,**  
[[1908] S. C. 866—Ct. of Sess.]

**(d) Computation of Time.**

[No paragraphs in this vol. of the Digest.]

**(e) Custom of Port.**

**39a. Wood Cargo—Custom at Port of Hull.**—By the custom and practice of the port of Hull there is an absolute obligation on the receivers of wood cargoes to provide a suitable berth for the chartered steamship on her arrival in dock and to supply and have ready a clear quay space or sufficient bogs for the discharge of the cargo, and not merely an obligation to use their best endeavours to provide such berth, quay space, or bogs.

**AKTIESELSKABET HEKLA v. BRYSON, JAMESON**  
[& Co., 25 T. L. R. 168—Brag, J.]

**(f) Excepted Days.**

[No paragraphs in this vol. of the Digest.]

**(g) Exception of Strikes, etc.**

[No paragraphs in this vol. of the Digest.]

**(h) Miscellaneous.**

**40. Contract for Sale and Delivery of Coal by Shipments—Construction as to Clause for Demurrage—Consignors not Limited to the Shipowners' Claim—Indemnity—Novation.**—Even if a contract is strictly c.i.f. there is no rule of law that a vendor thereunder, who is also consignee, may not secure for himself a profit under a demurrage clause; nor any indisputable presumption of law that the parties did not so intend.

The defendant had agreed to buy coals from the plaintiffs and to accept delivery to the railway authorities immediately on their arrival in port "at the rate of 120 tons per day for sailers and 250 tons per day by steamers," or to be "liable for demurrage at 4d. per net registered ton per day for sailers and 6d. per net registered ton per day for steamers."

There were eight cargoes, and eight bills of lading were indorsed and handed to the defendant; three of them incorporated the charter-party conditions by which the plaintiffs were liable for demurrage to the shipowners.

The plaintiffs now sued the defendant for demurrage in respect of the eight cargoes under his contract. The defendant contended that he



**Demurrage—Continued.**

was only liable to indemnify them against the shipowners' claims.

HELD—that the contract was an absolute and not an indemnity contract, and could not be so construed as to import into it a condition that the consignee was only liable to pay the amount of demurrage due by the consignors under the terms of their charter-parties.

HELD, ALSO—that by the indorsement and delivery of the bills of lading the consignee did not become bound by way of novation to pay demurrage as stipulated by the charter-parties, and was not discharged from the contract obligation.

HOULDER BROTHERS & Co. v. COMMISSIONER [OF PUBLIC WORKS. COMMISSIONER OF PUBLIC WORKS v. HOULDER BROTHERS & Co., [1908] A. C. 276; 77 L. J. P. C. 58; 98 L. T. 684—P. C.

**VII. MARITIME LIENS.**

See Nos. 25, 38, *supra*.

**(a) Generally.**

[No paragraphs in this vol. of the Digest.]

**(b) Owner's Lien.**

[No paragraphs in this vol. of the Digest.]

**VIII. BOTTOMRY.**

[No paragraphs in this vol. of the Digest.]

**IX. GENERAL AVERAGE.**

See INSURANCE (MARINE).

**X. RULES FOR PREVENTING COLLISIONS.****(a) Fog.**

**41. Duty to Stop on Hearing Signal—Statutory Presumption of Fault—Application to Foreign Vessel—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 419, sub-s. 4.**—In a dense fog two vessels, the *J.* and the *K.* (an Austrian ship) were proceeding in opposite directions but on nearly parallel courses. The *K.* heard a fog signal from the *J.*, but did not stop as required by art. 16 of the Regulations. Believing that she had the *J.* on her port bow, whereas in point of fact the *J.* was on her starboard bow, the *K.* ported her helm, with the result that she went to starboard and a collision occurred. Austria had adopted the Regulations for Preventing Collisions at Sea, but had not adopted the collision sections of the Merchant Shipping Act; and the *K.* contended that the statutory presumption of fault enacted by sect. 419, sub-sect. 4, of the Act did not apply to her:—

HELD—that, whether sect. 419, sub-sect. 4, applied to the *K.* or not, it was essentially bad seamanship for a steam vessel on hearing the fog signal of another vessel not to stop in order to ascertain the position of the signalling vessel when she next sounded; and, that the collision was due to the fault of the *K.*, she not having stopped, and having in consequence failed to ascertain the position of the *J.*, with the result

that she executed the manœuvre which brought about the collision.

THE JAMES JOICEY v. THE KOSTRENA, [1908] [S. C. 295—Ct. of Sess.]

**42. Moderate Speed—Hearing Fog-Signal of Another Vessel—Duty to Stop—King's Regulations, art. 16—Regulations for Preventing Collisions at Sea, 1897, art. 16.**—One of His Majesty's ships held partly to blame for a collision with another vessel in a fog upon the grounds (1) that she was not, in the circumstances, going at a moderate speed as required by art. 16 of the King's Regulations (which is the same as art. 16 of the Regulations for Preventing Collisions at Sea, 1897); and (2) that on hearing a fog-signal forward of her beam she did not stop her engines until the position of the other vessel was ascertained.

Art. 16 is a most important article, and ought to be most carefully adhered to in order to prevent danger of collision in thick weather.

THE CHINA NAVIGATION Co., LD. v. THE [LORDS COMMISSIONERS OF THE ADMIRALTY AND ANOTHER; THE CHINKIANG, [1908] A. C. 251; 77 L. J. P. C. 72; 24 T. L. R. 460—P. C.

**43. River Tyne Bye-laws—Fog—Both Vessels under Way—Bye-laws, art. 39—Large or Small Vessel.**—The owners and crew of *The Briton*, a small steamship, claimed damages by reason of a collision with *The Nettuno* in a fog on the river Tyne. Both vessels were under way. Evidence was called by the plaintiffs to prove that on the Tyne small vessels habitually get under way in a fog—in spite of and contrary to art. 39 of the Tyne bye-laws.

HELD—that a rule is a rule and that a vessel of one size cannot be allowed to be under way in a fog when a larger vessel is not so allowed.

THE NETTUNO, *Times*, March 2nd, 1908—[Deane, J.]

**44. Speed—Sounding Whistle—Approaching Fog—Position of other Ship Ascertained—Regulations for Preventing Collisions at Sea, art. 16.**—The plaintiffs' steamship when making about eight knots saw the defendants' steamship three miles off about a point on the port bow. The defendants' vessel was making about ten knots, and the vessels were on opposite courses. The plaintiffs' vessel was kept on her course and the defendants' vessel broadened to about two points on her port bow, the vessels thus approaching so as to pass clear port to port. A fog bank then hid the defendants' vessel from sight, and the plaintiffs' vessel continued on her course and speed until she reached the fog bank, when she heard the whistle of the defendants' vessel. She then sounded her whistle and her engines were put to slow, when another whistle was heard and her engines were put full speed astern and her whistle sounded. The defendants' vessel came in sight 300 or 400 yards off under a starboard helm, and at high speed, and struck and sank the plaintiffs' vessel. The defendants' vessel was found to blame for going at an

**Rules for Preventing Collisions—Continued.**

excessive speed in a fog and in starboarding her helm, and there was no appeal as to this. The plaintiffs' vessel was found not to blame. Upon appeal:—

**HELD**—that on the special facts of the case, inasmuch as the position and course of the defendants' vessel were ascertained before she was hidden by the fog so that the vessels would pass clear port to port, the plaintiffs' vessel did not act wrongly in continuing her speed and in not sounding her whistle sooner.

Decisions of Barnes, Pres. (92 L. T. 278; 10 Asp. M. C. 100) and C. A. (96 L. T. 869; 23 T. L. R. 358; 10 Asp. M. C. 434) affirmed.

**THE ORAVIA**, 97 L. T. 523; 23 T. L. R. 663; 10 Asp. M. C. 525—H. L.

**45. Vessel with Way on Sounding Two Blasts Immediately Before Collision—Regulations for Preventing Collisions at Sea, art. 15.**—Art. 15 of the Regulations for Preventing Collisions at Sea provides that in fog and in certain other conditions of weather "(a) a steam vessel having way upon her shall sound, at intervals of not more than two minutes, a prolonged blast; (b) a steam vessel under way, but stopped and having no way upon her, shall sound at intervals of not more than two minutes, two prolonged blasts with an interval of about one second between them."

In a collision between the *M.* and the *B.* in a fog, the *M.* admitted that she was in fault.

**HELD**—that the *B.* was also to blame because while she had way on she sounded two blasts, thereby misleading the *M.*

**THE MATIANA**, 25 T. L. R. 51—Barnes, Pres.

**(b) Generally.**

**46. "At Anchor"**—"Aground in or near a Fairway"—*Swansea Harbour—Regulations for Preventing Collisions at Sea*, 1897, art. 11.]—A trawler, which had been taking in ice at the Fish Wharf in the New Cut of Swansea Harbour, was moored for the night outside another trawler which was alongside the wharf.

**HELD**—that for the purposes of lights the outside trawler could not be said to be "at anchor" nor yet (when aground at low tide) aground "in or near a fairway."

**THE TURQUOISE**, [1908] P. 148; 77 L. J. P. 97; [98 L. T. 588—Div. Ct.

**47. Contributory Negligence—Differentiation of Degrees of Negligence.**—If the Rules for Prevention of Collisions were to be followed so nicely that the Court would have to differentiate between different degrees of negligence, it would be difficult to find a case of contributory negligence. Where the operative combination of two contributory causes have caused a collision, both vessels are to blame.

**THE CLUTHA BOAT**, No. 147, *Times*, Decem-ber 2nd, 1908—Barnes, Pres.

**48. Exercise of Judgment—Vessel which Ought to Keep Course—How Long Bound to do so.**—

Art. 21 of the Sea Regulations must be adhered to, and a vessel which has to keep its course must wait until it is reasonably clear that a collision cannot be avoided by the action of the other vessel alone. But the rule ought not to be pressed too tightly so as to leave no latitude of judgment on the part of the vessel which has to keep its course.

**THE KIRKWALL**, *Times*, December 17th, 1908—Barnes, Pres.

**49. Inland Tidal Water—Application of Regulations—All Waters Connected with the High Seas Navigable by Sea-going Vessels—Ultra vires—"Course Authorised or Required by these Rules"—Course Dictated by Good Seamanship—Necessity to Signal—Regulations for Preventing Collisions at Sea, arts. 27, 28, 29.**—The Regulations for Preventing Collisions at Sea apply, unless excluded by local rules, to inland navigation in waters connected with the high seas and navigable by sea-going vessels, and in that application they are not *ultra vires*. It is now too late to argue to the contrary in the C. A. The observations to that effect by Gorell Barnes, J., in *The Carlotta* ([1899] P. 223; 15 T. L. R. 362) approved.

In art. 28 of the regulation, which provides that when vessels are in sight of one another a steam vessel under way, "in taking any course authorised or required by these rules, shall indicate that course by" certain signals on her whistle or siren, the word "authorised" includes any course which, for the safety of the vessels, good seamanship requires to be taken with reference to the other vessel. The rule therefore applies when one of two approaching vessels thinks it necessary, in order to avoid danger of collision, to go astern though not absolutely required by rule to do so.

*The Uskmoor* (18 T. L. R. 727; 1902, P. 250) approved.

Decision of Deane, J. (10 Asp. M. C. 257) reversed.

**THE ANSELM**, [1907] P. 151; 76 L. J. P. 54; 97 [L. T. 16; 23 T. L. R. 378; 10 Asp. M. C. 438—C. A.

**50. "Not Under Command"—"Aground"—Not Giving Signal as to Course "Authorised or Required by Rules—Going Astern in Ordinary Course of Navigation, not from Fear of Collision—Regulations for Preventing Collisions at Sea, 1897, arts. 4, 11, 28.**—Two steamships were approaching the same point before sunrise, but in tropical daylight, on crossing courses. The *C.*, whose duty it was to give way, ported to pass under the *B.*'s stern, but did not clear her. It appeared that the *B.* was at the time slowly dragging through mud in shallow water at a speed of only one mile per hour, and was from time to time, in order to assist her progress and clear her screw, reversing her engines. The *C.* had failed to calculate the slowness of the *B.*'s speed, and had not ported sufficiently.

**HELD** (by Lord Alverstone, C. J., and Kennedy, L. J.)—that the *B.* was free from blame; she was not "aground" or "under no control," and was not therefore bound to exhibit



**Rules for Preventing Collisions—Continued.**

two red lights under art. 4 or 11, nor was she bound to signal the fact that she was at times going astern, for she did this in the ordinary course of her progress, and it was not a "course authorised or required" by the rules with reference to the position of the *C*;

**HELD** (by Moulton, L. J.)—that the *B*. was to blame because she had not given such a signal, and it was not proved that her omission to do so could not have contributed to the collision.

Per Moulton, L. J.: *Quære*, whether "the departure from the above rules" authorised by art. 27 can apply to art. 28, which is couched in imperative terms.

**THE BELLANOCH**, [1907] P. 170; 76 L. J. P. 83  
[—C. A.]

On appeal, affirmed on the ground that, if the *B*. was to blame, her neglect could not have affected the action of the *C*., [1907] A. C. 269; 76 L. J. P. 160; 97 L. T. 315; 10 Asp. M. C. 483—H. L.

**51. Merchant Ship and Fleet of Warships—Fleet in Two Lines—Special Circumstances—Regulations for Preventing Collisions at Sea, 1897, arts. 19, 21, 27—King's Regulations, c. xiv. 615 (6) (11).**—A merchant steam vessel found herself between two lines of destroyers and collided with one in an attempt to pass through one of the lines.

**HELD**, upon conflicting evidence—that both ships were to blame, the merchant vessel for bad look-out originally, whereby she got in between the two lines in spite of the Board of Trade notice warning single ships to keep out of the way of a squadron of warships, and for then maintaining her course and speed, when she should, in the special circumstances, have passed down between the two lines. The destroyer was also to blame, for under the article of the King's Regulations equivalent to art. 19 of the Regulations for Preventing Collisions at Sea, it was the duty of the officer in charge, having the merchant vessel on his own starboard side, to keep out of the way, and though he was required under the King's Regulations to keep his station and not change the course, except to avoid immediate danger, and, therefore, was entitled to a reasonable time to see what the merchant vessel would do, he had, in the circumstances, delayed action too long.

**THE ETNA**, [1908] P. 269; 77 L. J. P. 138; 98 L. T. 424; 24 T. L. R. 270—Bucknill, J.

**52. "Risk of Collision"—Regulations for Preventing Collisions at Sea, 1897, Preliminary Article to Steering and Sailing Rules, and art. 29—Functions of Nautical Assessors discussed.**—A steamship going down the river Elbe saw the three lights of a tug ahead or a little on her port bow, and ported. The tug improperly starboarded and got on to the steamship's starboard bow, whereupon the steamship slightly starboarded and steadied. The tug then ported back, and, whilst crossing the bows of the steamship, was sunk by her. The tug was found by Deane, J., to be alone to blame.

**HELD**—that the steamship was also to blame for not realising that there was "risk of collisions," and reversing accordingly.

Functions of nautical assessors in collision actions discussed by Lord Alverstone, C. J.

**THE CITY OF BERLIN**, [1908] P. 110; 77 L. J. P. 76; 98 L. T. 298—C. A.

**53. "Risk of Collision"—Thames Bye-laws, 1898, art. 46.**—Two vessels, one ascending and the other descending the Thames, collided. The Court of Appeal, reversing Bucknill, J., held both to blame; and laid down the following test:—There is "risk of collision" within the meaning of art. 46 of the Thames Bye-laws when two steamers are meeting one another upon such courses that if they both hold on, they will just pass clear of each other starboard to starboard, but so close that any slight deviation (such as may be caused by the tide or other craft) may give rise to a position of danger.

**HELD**, by the H. L.—that it was a pure question of fact whether one vessel or both vessels were to blame, and that the evidence justified the finding of Bucknill, J.

Decision of C. A. ([1908] P. 29; 77 L. J. P. 52; 98 L. T. 7; 10 Asp. M. C. 585) reversed.

**THE GUILDHALL**, [1908] P. 159; 77 L. J. P. 113; 98 L. T. 763—H. L.

**54. Sailing Vessel and Trawler—Trawler Engaged in Trawling—Duty to Keep Clear—Regulations for Preventing Collisions at Sea, 1897, arts. 9, 20.**—A sailing vessel ran into a steam trawler; the latter was trawling and exhibiting proper signals to indicate the fact, and was making about two and a half knots per hour.

The sailing vessel was held to blame for keeping no look out.

**HELD**—that the trawler was also to blame for keeping her course and speed when the sailing vessel was seen bearing down upon her, for she was not so encumbered with her trawl as to excuse her for failing to keep clear of a sailing vessel.

**THE CRAIGELLACHIE**, 77 L. J. P. 145; 99 L. T. 252—Bucknill, J.

**(c) Lights.**

**55. Drifters and Trawlers—"When Fishing with Drift Nets"—"When Engaged in Trawling"—"When Under Way"—Regulations for Preventing Collisions at Sea, 1897, art. 9 (1906) (b) (d).**—A trawler is "engaged in trawling" (and is not to be considered as "under way") not only while her trawl is actually down, but in the short interval between hauling it and shooting it again. If, however, instead of again shooting it at once she steams off to some other fishing ground, she must be deemed to be "under way."

A drifter, having a long length of nets out, who casts off and buoys her nets, and steams to another part of the nets a mile away to see if a



**Rules for Preventing Collisions—Continued.**

vessel has fouled them, is "under way," and no longer "fishing with drift nets."

THE COCKATRICE, [1908] P. 182; 77 L. J. P. [74; 98 L. T. 728; 24 T. L. R. 339—Deane, J.

56. *Pilot Vessels*—"On their Station on Pilotage Duty."—A pilot vessel which had been cruising with a pilot on board put him on to a vessel, and was then rowed up the river Avon in charge of two men. She was exhibiting a white light at her masthead, and had a flashlight on her deck ready for use. A steamship going down the river ran into and sank the pilot vessel. Those on the steamship charged the pilot vessel with exhibiting improper lights.

HELD—that the pilot vessel was carrying improper lights, as pilot vessels are only on their stations on pilotage duty within the meaning of art. 8 of the Collision Regulations, 1897, when in their pilotage district and on the look-out for vessels to pilot, and they are only allowed to exhibit the special lights mentioned in that article in those circumstances; but that nevertheless the steamship was alone to blame for the collision, as it was caused solely by the absence of look-out and excessive speed on her part.

THE REGINALD, 97 L. T. 608; 10 Asp. M. C. 519—Deane, J.

57. *Suez Canal—Duty of Vessel Proceeding to the Southward to Tie Up—Duty of Vessel Proceeding to the Northward to Approach with Caution—Rules for the Navigation of the Suez Canal, arts. 3, 7, 8, sub-ss. 3, 4, 7, 8, 10, and signal 11.*—The steamship *C.*, whilst proceeding southwards through the Suez Canal, sighted the navigation lights of a vessel approaching from the opposite direction. It was admittedly the practice in that part of the canal for steamships going south to tie up and permit vessels going northward to pass them. The *C.* drew in to the bank, and extinguished her navigating lights, exhibiting the lights required by signal No. 11 of the Suez Canal Rules on the free side of the channel. Whilst being tied up she was run into and damaged by the other vessel, the *C. C.* Those on board the *C. C.* alleged that they had the right of way, and that the *C.* had kept on too long, and had proceeded too fast.

HELD—that though the north-going steamer, the *C. C.*, had the right of way, yet it was her duty to be under such command that, in the event of her coming up to a steamship which had to tie up for her sooner than was expected, she could, by stopping or going astern, avoid running into such steamship; and that, as the *C.* was stopped at the time of the collision, she was not to blame.

Decision of Barnes, Pres. (94 L. T. 174; 10 Asp. M. C. 189) affirmed.

THE CLAN CUMMING, [1907] P. 311; 77 [L. J. P. 1; 97 L. T. 14; 10 Asp. M. C. 436—C. A.

**(d) Narrow Channel.**

58. *Cardiff Drain—Application of Collision Regulations, 1897.*—A steamship after leaving

the Roath Dock Basin under the orders of the dock-master, sighted the masthead and red lights of a tug and the green light of her tow two to three cables off, and one to two points on the port bow. The tug and tow were coming up on the east side of Cardiff Drain, which runs about north and south, bound into the East Bute Dock. The steamship and tug both sounded a port-helm signal, but a collision occurred. In a damage action each side charged the other with breaches of the Collision Regulations, 1897.

HELD—that the Collision Regulations did not apply to vessels meeting in such circumstances in Cardiff Drain, and that the steamship was alone to blame for the collision, as she ought to have waited till the channel was clear before she attempted to cross the incoming traffic.

THE RED CROSS, 97 L. T. 610; 10 Asp. M. C. [521—Deane, J.

59. "*Narrow Channel*" Rule—*To what Waters it Applies—Approach to a Harbour—Regulations for Preventing Collisions at Sea, 1897, arts. 19, 21, 22, 25, 27.*—The "*Narrow Channel*" rule ought to be regarded as applicable to such waters as those lying between two breakwaters or piers at the entrance to a harbour, and to so much of the water outside such points as is necessary for the negotiation of the passage.

*The Knaresbro* (1900) [1907] P. 38, n.—Barnes, J.) followed.

Even if the rule does not in strictness apply to such waters, good seamanship requires that the principle enunciated in it should be followed.

Decision of Barnes, Pres. ([1907] P. 36; 76 L. J. P. 97; 96 L. T. 239; 10 Asp. M. C. 361) affirmed.

THE KAISER WILHELM DER GROSSE, [1907] P. [259; 76 L. J. P. 138; 97 L. T. 366; 23 T. L. R. 554; 10 Asp. M. C. 504—C. A.

**(e) Negligence.**

See No. 47, *supra*.

**(f) Sound Signals.**

60. *Failure to Give—Course Authorised or Required—Statutory Presumption of Fault.*—

A steamship was lying across the Humber waiting to enter a dock on the north side, occasionally putting her engines astern to counteract the effect of the ebb tide. A tug, with a lighter in tow, crossing the river from the south under slight starboard helm, sounded a long blast on her whistle to give warning of her proximity, but not signifying an intention to execute any particular manœuvre, and starboarded more to pass under the steamship's stern. Shortly afterwards, as the steamship was seen to be coming astern, the tug hard-a-starboarded, but did not sound a short blast signal, and a collision occurred between the lighter and the steamship.

Bucknill, J., HELD—that the steamship was to blame for keeping a bad look-out, and that, though the tug had committed a breach of art. 28, yet she was not to blame, as the breach could not by any possibility have contributed to the collision. On appeal:—

**Rules for Preventing Collisions—Continued.**

**HELD**—that continuing a course under a helm is taking a course authorised or required, within the meaning of art. 28, and that the tug was to blame for not giving a whistle signal, as the fact that the steamship had not noticed the one-blast signal from the tug did not prove that a two-blast signal would not have been heard, and therefore it could not be said that the breach of rule could not by any possibility have contributed to the collision.

THE ARISTOCRAT, [1908] P. 9; 77 L. J. P. 57; [97 L. T. 838; 10 Asp. M. C. 567—C. A.]

**61. Falling Snow—Speed—Pilot's Responsibility—Regulations for Preventing Collisions at Sea, 1897, arts. 15, 16.**—A vessel approaching a squall of falling snow is not within arts. 15, 16 as to moderate speed and sound signals, but she must be so navigated as to be going only at a moderate speed when she herself becomes enveloped in the squall, and whilst in its vicinity must give such sound signals as good seamanship requires.

*Semble*, if a pilot is compulsorily in charge the sounding of such signals will be within his province.

THE ST. PAUL, [1908] P. 320; 99 L. T. 552—[Barnes, Pres.]

**62. "Vessel Not under command"—Moderate Speed—Injured Vessel Able to Steam at a Slow Pace.**—An injured vessel was able to proceed and manœuvre slowly, although not able to go at full speed, and was in fact proceeding at a moderate speed.

**HELD**—that she could not be said to be a vessel "not under command" within the meaning of art. 15 of the regulations.

THE JAMES JOICEY v. THE KOSTRENA, [1908] [S. C. 295—Ct. of Sess.]

**(g) Tug and Tow.**

[No paragraphs in this vol. of the Digest.]

**(h) Vessels Crossing.**

**63. Crossing Rule—Regulations for Preventing Collisions at Sea, 1897, arts. 19, 21, n.—Functions of Nautical Assessors Discussed.**—Two steam-vessels approaching one another on nearly opposite courses were "crossing" vessels. The vessel having the other on her own starboard side, and therefore bound to give way, had just crossed the other's bows when she suddenly ported. The other vessel, seeing her masthead lights coming into line, stopped and reversed; but her stem struck her portside amidships and sank her.

**HELD**—that the giving-way vessel was alone to blame for improper porting, and that the other vessel, finding herself so close that collision could not be avoided by the action of the giving-way vessel alone, had, as soon as the danger became apparent, taken the best available steps.

Functions of nautical assessors in collision actions discussed by Kennedy, L. J.

THE KONING WILLEM II., [1908] P. 125; 77 [L. J. P. 65; 98 L. T. 13; 10 Asp. M. C. 591—C. A.]

**64. Narrow Channel—Starboard Hand Rule—Vessels Crossing—Good Seamanship.**—Where vessels have to cross each other in a narrow channel there may be circumstances which prevent the starboard hand rule operating to its full extent. Where no local rule applies to a particular spot, vessels have to deal with each other on the footing of good seamanship, of course complying as far as possible with the necessity of keeping on their starboard hand of the channel. For instance, if two vessels approached the spot at the same time, it would be reasonable for the one which had the tide against her to wait while the other passed.

THE PRINCE LÉOPOLD DE BELGIQUE, *Times*, [December 17th, 1908—Barnes, Pres.]

**65. Vessel Approaching Spot to Take Up Pilot—Duty to Keep Course and Speed—Regulations for Preventing Collisions at Sea, 1897, arts. 19, 21, 22, 29.**—The plaintiffs' and the defendants' steamers were approaching each other on different courses, each making for a pilot schooner for the purpose of picking up a pilot. The plaintiffs' steamer had the other on her starboard side. The defendants' steamer exhibited a signal for a pilot, and a small boat with the pilot in her was lowered from the schooner and rowed towards the defendants' steamer. The latter, when at a distance of about three-quarters of a mile from the boat, reduced her speed, and later on her engines were stopped for the purpose of taking the pilot out of the boat. Those on board the plaintiffs' steamer were able and ought to have seen the boat with the pilot, and that the defendants' steamer must reduce speed to take the pilot on board. A collision occurred between the two steamers. If the defendants' steamer had not reduced her speed she would have passed ahead of the plaintiffs' steamer. The plaintiffs, whose steamer was held to blame, contended that the defendants' steamer was also to blame because she had not kept her speed as required by art. 21 of the Regulations for Preventing Collisions at Sea.

**HELD**—that, as the defendants' steamer was, to the knowledge of those on board the plaintiffs' steamer, manœuvring in the ordinary way to pick up a pilot, and as those on board the plaintiffs' steamer ought to have seen what the defendants' steamer was doing, the defendants' steamer was not to blame.

THE ROANOKE, [1908] P. 231; 77 L. J. P. 115; [99 L. T. 78; 24 T. L. R. 526; 52 Sol. Jo. 426—C. A.]

**XI. COLLISION ACTIONS.****(a) Division of Loss.**

[No paragraphs in this vol. of the Digest.]

**(b) Limitation of Liability.**

See also ADMIRALTY, No. 2.

**66. "Fault or Privity" of Owner—Small Vessel—Negligent Navigation—Leaving Deck.**—



**Collision Actions—Continued.**

This was a limitation action, and the defence was raised that the collision in question occurred through the "fault or privity" of the owner. *The G. & E.* was a ketch and the owner was master. On the night of the collision, in bad weather, *The G. & E.* was put on to the port tack with the helm lashed half a lee. The mate alone remained on deck while the master went below to rest. The latter was roused later, but too late to do anything to avert the collision.

HELD—that there was no fault of the master and owner in leaving, as she was left, a vessel of that size even at night and in bad weather, since a man must go below sometimes for needed rest.

*THE G. & E.*, *Times*, April 2nd, 1908—Deane, J.

**(c) Measure of Damages.**

**67. Loss after Temporary Repairs.**—The plaintiffs' ship was damaged by a collision in the English Channel with the defendants' ship owing to the fault of the latter. The plaintiffs' ship put into a neighbouring port for repairs, and was temporarily repaired, there being no facilities in that port for effecting the necessary permanent repairs. She then left for Bristol, her port of destination, in order to deliver her cargo and earn her freight, but on the way she foundered owing to the fact that she had not been sufficiently and properly repaired.

HELD—that the foundering was not a natural or probable consequence of the collision, and the defendants were not liable in respect thereof.

*THE BRUXELLESVILLE*, [1908] P. 312; 77 L. J. P. 156; 98 L. T. 251; 24 T. L. R. 223—Bucknill, J.

**68. Loss of a Dredger—Owners Making no Profit by Use thereof.**—A ship, in consequence of negligent navigation, collided with a dredger, which belonged to the Mersey Docks and Harbour Board, being used by them for dredging the bar at the mouth of the Mersey. The Harbour Board earned no profits out of their undertaking. The dredger had to be laid up for repairs, but no substitute was hired.

HELD—that the proper measure of damages in respect of her detention was the value of the work which she would have done during the time, reckoned upon the basis of her cost, depreciation, and working expenses, but with no allowance for owners' profit.

*The Greta Holme* ([1897] A. C. 596; 66 L. J. P. 166; 77 L. T. 231—H. L.) applied.

Decision of C. A. *sub nom. The Marpessa*, ([1906] P. 95; 75 L. J. P. 18; 54 W. R. 339; 94 L. T. 428; 10 Asp. M. C. 232) affirmed.

*MERSEY DOCKS AND HARBOUR BOARD v. THE [OWNERS OF THE MARPESSA]*, [1907] A. C. 241; 76 L. J. P. 128; 97 L. T. 1; 23 T. L. R. 572; 10 Asp. M. C. 464—H. L.

**69. Ship being Run at a Loss—Expectation of Future Profit.**—Shipowners, who had been

running their ship at a profit, began to run her with other ships on a different trade route at a present loss so as to secure a footing there in the hope of making a profit in the future. While on one of these voyages the ship was injured by collision with another ship owing to the fault of the latter. At the time of the collision she was still running at a loss.

HELD—that the owners were not entitled to recover, in addition to out-of-pocket expenses, damages for the loss of the use of their ship during the time she was being repaired.

*THE BODLEWELL*, [1907] P. 286; 76 L. J. P. 61; 96 L. T. 854; 23 T. L. R. 356; 10 Asp. M. C. 479—Deane, J.

**70. Wreck—Remoring Obstruction—Liability for Expense—Abandoned Vessel—Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.), s. 77.**—A vessel collided with and sank a fishing vessel in the Thames. The Thames Conservators raised the sunken vessel, and recovered by action the expenses thereof from her owners. The latter claimed that amount from the owners of the vessel in default.

HELD—that whether the sunken vessel had been abandoned or not, the owners of the sunken vessel were entitled to recover that sum from the owners of the vessel in default.

*THE WALLSEND*, [1907] P. 302; 76 L. J. P. 131; [96 L. T. 851; 23 T. L. R. 356; 10 Asp. M. C. 476—Deane, J.

And see No. 85, *infra*.

**(d) Practice.**

**71. Service of Writ out of Jurisdiction—Collision in Foreign Waters—Undertaking to Give Security Abroad—"Necessary or Proper Party"—Ord. 11, r. 1 (g).**—A collision occurred between *The City of Bradford* and *The Hartley*, two English vessels, and *The Hagen*, a German vessel, in the Elbe, and *The City of Bradford* and *The Hagen* gave to each other undertakings for bail at Hamburg to answer any claims in respect thereof. *The Hartley* brought an action *in rem* against *The City of Bradford* in England. *The City of Bradford* then brought an action *in personam* in the Admiralty Division against the owners of *The Hartley* and the owners of *The Hagen*, and applied under Ord. 11, r. 1 (g), for leave to serve notice of the writ on the owners of *The Hagen* in Germany. At this time no action in Germany had been commenced by *The Hagen* against *The City of Bradford*, but an action was subsequently commenced within a reasonable time.

HELD—that the fact that the undertakings for bail were given in Germany, where the collision took place, and that an action either would probably be or had been commenced there within a reasonable time, was a circumstance to take into consideration in determining whether to give leave to serve notice of the writ on the owners of the German vessel abroad, and that in the



**Collision Actions—Continued.**

exercise of its jurisdiction the Court ought to refuse leave.

THE HAGEN, [1908] P. 189; 77 L. J. P. 124; [98 L. T. 891; 24 T. L. R. 411; 52 Sol. Jo. 335—C. A.]

**72. Wrongful Arrest—Motion for Damages—Mala fides—Negligence.**—This was a motion for damages for wrongful arrest of the defendant's vessel in a collision action which had been discontinued by the plaintiff. When the defendant's costs came to be taxed, the registrar disallowed costs incurred by reason of the arrest on the ground that such costs, if any, would take the form of damages for wrongful arrest.

HELD—that, in the absence of *mala fides* or of such gross negligence as amounted to *mala fides*, the motion must be dismissed.

THE FREMAD, Times, March 31st, 1908—[Deane, J.]

**XII. SALVAGE.****(a) Agreements for Salvage.**

**73. Agreement with Ship's Agent.**—A steamer having gone ashore, the master sent the mate with a letter to the plaintiffs, who had acted as the ship's agents at the last port at which she had called, asking for a powerful tug, and saying that a salvage boat would be of assistance, on the principle of "no cure no pay." The plaintiffs, having received the letter, telegraphed to the shipowners that their interests had attention. Having decided that a "no cure no pay" agreement was impracticable, they then chartered a tug at a certain rate per day, making themselves personally liable for the hire. Upon the tug and the plaintiff's representative arriving at the stranded vessel the master refused to accept the services of the tug except upon the basis of "no cure no pay," and the master thereupon agreed to pay the plaintiffs, on the "no cure no pay" basis, £4,000 if they succeeded in floating the vessel. The tug was then made fast and the vessel was floated. In an action to recover £4,000:—

HELD—that the plaintiffs were not entitled to recover this sum, upon the ground that there was no necessity for the master to make the agreement, there being an existing agreement for the services of the tug; and by Fletcher Moulton, L. J., upon the further ground that the evidence showed that the plaintiffs were acting as the shipowner's agents, and that therefore they could not enter a contract with the master.

The plaintiffs were entitled to recover their disbursements and usual agency charges.

Decision of Barnes, Pres. ([1907] P. 15; 76 L. J. P. 19; 96 L. T. 126; 10 Asp. M. C. 353) affirmed.

THE CRUSADER, [1907] P. 196; 76 L. J. P. 102; [97 L. T. 20; 23 T. L. R. 382; 10 Asp. M. C. 442—C. A.]

**(b) Apportionment of Award.**

**74. Rating of Engineer and Navigating Officers.**—It is now an established rule in

apportioning salvage awards to treat the rating of a navigating officer as equal to that of the corresponding grade of engineer officer.

THE BIRNAM, 76 L. J. P. 28; 96 L. T. 792; 10 [Asp. M. C. 462—Deane, J.]

**(c) Basis of Valuation.**

[No paragraphs in this vol. of the Digest.]

**(d) Derelicts.**

[No paragraphs in this vol. of the Digest.]

**(e) Generally.**

**75. Services not Rendered Voluntarily.**—Services rendered by one vessel to another in distress are not "salvage" services unless voluntarily rendered.

One vessel assisted another in distress. Both vessels were insured in the same mutual insurance company, under policies which contained a condition that any vessel insured in the company should if necessary render assistance to any other vessel insured in the same company.

HELD—that the services rendered, being contractual and obligatory, were not "salvage" services entitling the owners of the vessel rendering them to "salvage" remuneration.

CLAN STEAM TRAWLING CO., LD. v. ABERDEEN [STEAM TRAWLING AND FISHING CO., LD., [1908] S. C. 651; 45 Sc. L. R. 462—Ct. of Sess.]

**(f) Life Salvage.**

**76. Danger to Life.**—A large steamer carrying 400 passengers and a cargo worth some £200,000 stranded at night off the Lizard. In answer to her signals of distress four tugs put out from Falmouth. They were unable to get close to the vessel owing to rocks; but at the request of the lifeboat men they towed the lifeboats backwards and forwards to the shore, thus enabling the passengers and crew to be landed in course of several trips.

HELD—that the tugs should receive £800, because at some risk, owing to fog, wind, and swell, they had expedited the landing of the passengers, and had so assisted to save life from apprehended, if not actual, danger.

THE SUEVIC, [1908] P. 154; 77 L. J. P. 92; 98 [L. T. 188—Bucknill, J.]

**(g) Practice.**

See also ADMIRALTY, NOS. 3, 4.

**(h) Towage.**

[No paragraphs in this vol. of the Digest.]

**XIII. TOWAGE CONTRACTS.**

**77. Collision—When Towage Ended—Third Party Notice—Indemnity.**—Two dock tugs brought a steamer to her berth in the docks, but a barge moored to a buoy prevented her hauling quite close alongside the quay, to which her ropes had been already made fast. The dockmaster directed two men from the tugs to unmoor the barge, and directed a third tug to tow her away. This operation was so negligently performed that the barge collided with the steamer and sank.

**Towage Contracts—Continued.**

In an action by the barge owners against the dock owners the latter admitted liability, but claimed indemnity against the steamship owners. It appeared that a firm of repairers had undertaken to berth the vessel, and for this purpose hired the tugs from the dock owners, upon the terms that the masters and crews thereof should cease to be under the control of the dock owners, and should be under the orders of the master of the steamer, and be deemed the servants of the steamer's owners.

Deane, J., having held that the steamship owners were not liable, because (1) they were not parties to the contract in question; and (2) in any case, the towage contract was finished, and the tugs and their crews were again under the control of the dock owners when the collision occurred:—

**HELD**—that his decision must be upheld for the second reason given by him.

Decision of Deane, J. ([1906] P. 317; 75 L. J. P. 104; 10 Asp. M. C. 347) affirmed.

**THE KATE**, [1907] P. 296; 76 L. J. P. 134; 97 [L. T. 502; 10 Asp. M. C. 510—C. A.

**78. Construction of Contract—Liability for Loss Caused by Servant's Negligence**—“*Finding all Items of Transportation*”—“*All Transporting to be at Owner's Risk.*”—The defendants undertook to carry out certain repairs to the plaintiffs' vessel, and, for that purpose, to “transport vessel from berth to dry dock, finding all tugs, pilots, watermen and boats, sufficient hands for managing ship . . . and all items of transportation to loading berth.” In the margin of the accepted tender were printed the words, “All transporting to be at owners' risk.”

During the transportation the vessel got adrift from the only tug, and sustained damage, owing to the parting of an alleged defective rope belonging to the vessel, and to the delay caused by the eye of a wire hawser, also belonging to her, not fitting the towing hook.

**HELD**—that the defendants were liable, for, after undertaking to find “all items of transportation,” they had omitted to ascertain that the necessary items, to whomsoever belonging, were efficient for the purpose, and, owing to this neglect on their part, two tugs were, in the particular case, required for the safe handling of the vessel.

The marginal note only protected them against risks incidental to navigation, provided they exercised reasonable care in carrying out the transportation.

**THE FORFARSHIRE**, [1908] P. 339; 99 L. T. 587 [—Deane, J.

**XIV. PILOTAGE.****(a) Authority of Pilot.**

See No. 61, *supra*.

**(b) Defence of Compulsory Pilotage.**

**79. Master's Duty to Assist Pilot.**—Though the master of a ship is not entitled to interfere with the pilot in the navigation of the ship, the

pilot is entitled to competent assistance from the master and crew. Where, therefore, the pilot, who was in compulsory charge of a steamship, mistook the lights of a vessel at anchor for those of a vessel in motion, it was held to be the duty of the master to call the pilot's attention to the fact that the lights were stationary, and the steamship was held to blame for a collision with the vessel at anchor.

**THE TACTICIAN**, [1907] P. 244; 76 L. J. P. 80; [97 L. T. 621; 23 T. L. R. 369; 10 Asp. M. C. 534—C. A.

**(c) Exempted Ships.**

[No paragraphs in this vol. of the Digest.]

**(d) Limits of Compulsory Pilotage.**

[No paragraphs in this vol. of the Digest.]

**(e) Miscellaneous.**

[No paragraphs in this vol. of the Digest.]

**XV. HARBOURS AND DOCKS.****(a) Authority of Harbour Master.**

**80. Mooring Vessels—Negligence—Liability of Harbour Board.**—A tug and a coal hulk were properly moored in the river at the port of East London, Cape of Good Hope. The port was under the control of a harbour board. To make a clear course for a regatta the tug and coal hulk were temporarily moved by the harbour-master, and were negligently attached to a hulk in the river. While so attached, and during the night of the day following that on which the regatta was held, a flood caused the tug and the coal hulk to break adrift, and they were lost. There was time after the regatta to have moved the vessels back to their original moorings.

**HELD**—that the harbour board were liable for the acts of their officer, the place and method of mooring vessels being within his authority.

**Reney v. Kirkcudbright Magistrates** ([1892] A. C. 264; 61 L. J. P. C. 23; 67 L. T. 474—H. L. Sc.) followed.

Decision of the Supreme Court of the Cape of Good Hope (23 S. C. R. 540) affirmed.

**THE EAST LONDON HARBOUR BOARD v. THE [CALEDONIA LANDING, SHIPPING, AND SALVAGE CO., LD., AND THE COLONIAL FISHERIES CO., LD.]**, [1908] A. C. 271; 77 L. J. P. C. 111; 98 L. T. 682; 24 T. L. R. 516—P. C.

**(b) Dues.**

**81. Exemption—Lighter Entering Dock to Unload into Ship—Lighter Leaving Dock without Unloading—West India Dock Act, 1831 (1 & 2 Will. 4, c. lii.), ss. 76, 83**—“*Ship or Vessel Lying Therein*”—*Lighter Entering Dock before Ship*—“*Bona fide Engaged in so Discharging*”—*Barge Not Leaving by Next Available Tide—Rate for Lying in Dock—Sunday—London and St. Katharine Docks Act, 1864 (27 & 28 Vict. c. clxxviii.), ss. 132, 133, 136—East and West India Dock Company's Extension Act, 1882 (45 & 46 Vict. c. xc.), s. 25; Sched., Part I.—London and St. Katharine and East and West India Docks Act, 1888 (51 & 52 Vict. c. cxliii.), s. 57.*—By sect. 83 of the West India Dock Act,



**Harbours and Docks—Continued.**

1831, lighters entering into a dock to discharge or receive goods to or from on board of any ship or vessel lying therein shall be exempt from payment of rates so long as such lighter shall be *bonâ fide* engaged in discharging or receiving such goods.

A lighter entered one of the docks for the purpose of discharging her cargo into a vessel lying therein, but was unable to do so because the vessel was already full, and the lighter thereupon left the dock without discharging any part of her cargo.

HELD, by Lord Loreburn, L. C., Lord Macnaghten, Lord Robertson, and Lord Collins (Lord Ashbourne and Lord Atkinson dissenting)—that, as the lighter had not discharged any part of her cargo she was not exempt from payment of rates.

Decision of C. A. ([1908] 1 K. B. 786; 97 L. T. 357; 23 T. L. R. 590; 10 Asp. M. C. 512) reversed.

Section 136 of the London and St. Katharine Docks Act, 1864, provides that "All lighters and craft entering into the docks . . . to discharge or receive ballast or goods to or from on board of any ship or vessel lying therein shall be exempt from the payment of any rates so long as the lighter or craft is *bonâ fide* engaged in so discharging or receiving the ballast or goods."

A lighter finished discharging into a ship in a dock on the afternoon of Saturday, and the next high tide was at midnight. The ship left the dock by that tide, but the lighter remained in the dock until 1 a.m. on Monday. The dock company claimed 6*d.* per ton on the lighter's tonnage under a rate which provided that lighters, having discharged or received goods to or from a ship and remaining in dock beyond the first available tide, should pay 6*d.* per ton register per week.

HELD—that when the lighter stayed on in the dock after midnight of the Saturday she ceased to be "*bonâ fide* engaged in discharging," and was not exempt from the rate.

A lighter entered a dock for the purpose of discharging into a ship which was then lying in the dock. The ship was unable to take the cargo owing to want of cargo space. The lighter then discharged into a ship which came into the dock after the lighter.

HELD—that the lighter was not exempt from rates, as it was a condition of exemption that the ship into which the barge discharged should be lying in the dock at the time when the lighter entered.

Decision of C. A. ([1908] 2 K. B. 175; 97 L. T. 674; 23 T. L. R. 765; 10 Asp. M. C. 557) reversed.

LONDON AND INDIA DOCKS CO. *v.* THAMES [STEAM TUG AND LIGHTERAGE CO. THE SAME *v.* McDougall and Bonthron, LD. THE SAME *v.* PAGE, SON AND EAST, LD., 99 L. T. 590; 24 T. L. R. 834; 52 Sol. Jo. 713—H. L.

82. "*Limits of Port*" for *Purposes of Dues—Fiscal or Customs Port—Local and Commercial*

**Port—Natural Harbour Artificially Enlarged.]**

—Port Dinowic, which is within the fiscal or customs port of Carnarvon, is within "the limits of the port" of Carnarvon for the purposes of the Carnarvon Harbour Acts, 1793 and 1809.

So held upon consideration of those statutes and of the facts that persons using Port Dinowic benefited to some extent by work done by the trustees of the Carnarvon Harbour, and had paid dues to the trustees for many years.

HELD ALSO—that new docks at Dinowic inside the old high-water mark were also within the fiscal port of Carnarvon, the limits of such a port following the high-water line when carried inland by an artificial enlargement of the old harbour.

Decision of C. A. ([1906] 1 Ch. 179; 75 L. J. Ch. 187; 94 L. T. 42; 22 T. L. R. 182; 10 Asp. M. C. 164) affirmed.

ASSHETON SMITH *v.* OWEN, [1907] A. C. 124; [76 L. J. Ch. 308; 96 L. T. 478; 23 T. L. R. 385; 10 Asp. M. C. 411—H. L.

83. *Pier—Constructed Ostensibly under Provisional Order—Order in fact not Complied With—Public Nuisance—Passenger Rates—Tonnage Rates for Vessels "Mooring" at the Pier—Recovery of Rates Paid under Protest—Right of Owners of Pier to Exclude Vessels—The Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), ss. 25, 33, 47—The General Pier and Harbour Act, 1861 (24 & 25 Vict. c. 45), ss. 3, 15, 16.]*

—By a Provisional Order, confirmed by a special Act of Parliament, a company were authorised to construct within certain limits a pier extending some 500 yards from above high-water mark into the sea, with power, upon the certificate of the Board of Trade that all necessary consents required on the part of the Board of Trade under the Order or otherwise had been given, to levy certain rates for passengers using the pier and for vessels "mooring" within the limits. The pier was constructed partly within and partly without the prescribed limits, and the certificate of the Board of Trade was not obtained. The company went into liquidation, and in 1899 H. became the purchaser of the pier.

For some years prior to July, 1907, the plaintiffs ran excursion steamers to the pier, and paid the rates which H. demanded. In June, 1907, H. leased the pier to the defendant company, who declined to allow the plaintiffs' steamers to call at the pier except on payment of a fixed sum for the season for passengers, and also for the "mooring" rates specified in the order. The plaintiffs claimed an injunction to restrain the defendants from excluding their ships and passengers from using the pier, and repayment of the rates paid under protest since July 1st, 1907.

HELD—(1) that the pier, being unauthorised, was a nuisance, and that no statutory rights arose in favour of the plaintiffs or defendants; (2) that as the pier was the defendants' property they could exclude the plaintiffs from using it; (3) that the rates paid under protest could not be recovered, because the plaintiffs had received the consideration for such payment; and (4) that the plaintiffs' steamers, when alongside and



**Harbours and Docks—Continued.**

made fast to the pier for the purpose of embarking and disembarking passengers, were not "moored" within the meaning of the Order.

LIVERPOOL AND NORTH WALES STEAMSHIP [Co., LD. v. MERSEY TRADING Co., LD., [1908] 2 Ch. 460; 77 L. J. Ch. 658; 72 J. P. 385; 24 T. L. R. 712—Neville, J. Affirmed, 25 T. L. R. 89; [1908] W. N. 233.

**(c) Liability of Harbour Authority.**

See No. 80, *supra*.

**(d) Liability of Wharf Owner.**

[No paragraphs in this vol. of the Digest.]

**(e) Miscellaneous.**

[No paragraphs in this vol. of the Digest.]

**XVI. MISCELLANEOUS SHIPPING REGULATIONS.**

**84. Tonnage—Deck Cargo—Coal for Use of Ship Carried on Deck—“Timber, Stores, or Other Goods”—Liability for Light Dues—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 85—Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict. c. 44), s. 5; Sched. II., r. 8.]—By sect. 85 of the Merchant Shipping Act, 1894, “if any ship . . . carries as deck cargo, that is to say, in any uncovered space upon deck, or in any covered space not included in the cubical contents forming the ship’s registered tonnage, timber, stores, or other goods, all dues payable on the ship’s tonnage shall be payable as if there were added to the ship’s registered tonnage the tonnage of the space occupied by those goods at the time at which the dues become payable.” A steamship leaving a port in England carried, besides the coal in her bunkers, 100 tons of bunker coal on the awning deck for use in the ship’s boiler fires, and this coal was during the voyage out transferred to the bunkers and used in the boiler fires. Light dues were claimed in respect of the space occupied by the 100 tons of coal carried on deck.**

**HELD**—that “deck cargo” in sect. 85 was not limited to freight-earning cargo; that the word “goods” was wide enough to include bunker coal; and that therefore the tonnage of the space on deck occupied by the 100 tons of coal must be added to the ship’s registered tonnage to ascertain the light dues payable.

*Richmond Hill Steamship Co. v. Trinity House Corporation* ([1896] 2 Q. B. 134; 65 L. J. Q. B. 561; 75 L. T. 8; 45 W. R. 6—C. A.) discussed.

Decision of *Bray, J.* ([1907] 1 K. B. 604; 76 L. J. K. B. 377; 96 L. T. 846; 23 T. L. R. 341; 12 Com. Cas. 244; 10 Asp. M. C. 457) affirmed.

CAIRN LINE OF STEAMSHIPS, LD. v. CORPORATION OF TRINITY HOUSE, [1908] 1 K. B. 528; 77 L. J. K. B. 363; 98 L. T. 86; 24 T. L. R. 212; 13 Com. Cas. 175; 10 Asp. M. C. 602—C. A.

**85. Wreck—Collision—One Vessel Sunk in Thames—Wreck Raised by Conservancy—Arrested by Marshal in Collision Action—Priorities—Thames Conservancy Act, 1894 (57 & 58 Vict. c.**

clxxxvii.), s. 77.]—A steamship was sunk by a collision in the Thames, and was raised by the Conservators under their statutory powers. She was then arrested by the Admiralty marshal at the suit of the owners of the other vessel.

**HELD**—that, as the ship had been preserved by the Conservators, their claim for expenses incurred ranked first; that they might sell the vessel and reimburse themselves, and pay the surplus into Court for the benefit of the persons establishing a claim thereto.

THE SEA SPRAY, [1907] P. 133; 76 L. J. P. 48; 96 L. T. 792; 10 Asp. M. C. 462—Deane, J.

And see No. 70, *supra*.

**SHOP HOURS REGULATIONS.**

See LOCAL GOVERNMENT; PUBLIC HEALTH

**SHOWS.**

See THEATRE.

**SIERRA LEONE.**

See DEPENDENCIES AND COLONIES.

**SLANDER.**

See LIBEL AND SLANDER.

**SLANDER OF TITLE.**

See TORTS.

**SLAUGHTER-HOUSE.**

See PUBLIC HEALTH.

**SMALL DWELLINGS.**

See LOCAL GOVERNMENT.

**SMUGGLING.**

See REVENUE.

**SOCIETIES.**

See CLUBS; FRIENDLY SOCIETIES;  
INDUSTRIAL AND PROVIDENT  
SOCIETIES.

**SOLICITORS.**

I. IN GENERAL . . . . .	COL. 609
[No paragraphs in this vol. of the Digest.]	
II. AUTHORITY . . . . .	609
III. CERTIFICATE . . . . .	609
[No paragraphs in this vol. of the Digest.]	
IV. CONFIDENTIAL RELATION . . . . .	610
V. COSTS . . . . .	610
(a) General . . . . .	610
(b) Bills of Costs . . . . .	610
(c) Charging Orders . . . . .	611
[No paragraphs in this vol. of the Digest.]	
(d) Taxation . . . . .	611
(e) Solicitors Remuneration Act, 1881 . . . . .	614
VI. COVENANT IN RESTRAINT OF TRADE . . . . .	615
[No paragraphs in this vol. of the Digest.]	
VII. LIABILITY . . . . .	615
[No paragraphs in this vol. of the Digest.]	
VIII. LIEN . . . . .	615
IX. MISCONDUCT . . . . .	616
X. PRACTICE . . . . .	616
[No paragraphs in this vol. of the Digest.]	
XI. SOLICITOR TRUSTEE . . . . .	616
[No paragraphs in this vol. of the Digest.]	
XII. UNDERTAKINGS . . . . .	616
XIII. UNQUALIFIED PERSONS . . . . .	616
[No paragraphs in this vol. of the Digest.]	
And see BANKRUPTCY; EXECUTORS; FRIENDLY SOCIETIES, No. 3; MORT- GAGES; PRACTICE AND PROCEDURE; PUBLIC AUTHORITIES.	

**I. IN GENERAL.**

[No paragraphs in this vol. of the Digest.]

**II. AUTHORITY.**

1. *Company—Winding Up—Two Petitions—Solicitors Ordered to Pay Costs—Authority of Client.*—Solicitors having been ordered (24 T. L. R. 837) to pay the costs of a second winding-up petition on the ground that they had exceeded their instructions in using their client's name as sole petitioner, she having merely consented to join with other shareholders in petitioning, on appeal a compromise was arranged.

IN RE INTERNATIONAL SECURITIES CORPORATION, LD. (No. 2), 25 T. L. R. 40.

**III. CERTIFICATE.**

[No paragraphs in this vol. of the Digest.]

Y.D.

**IV. CONFIDENTIAL RELATION.**

2. *Lease with Option to Purchase from Client to Solicitor—Undue Influence—Solicitor in hac re—Independent Advice.*—C., a solicitor, who carried on business as a brewer, acting in connection with his brewery business, took a lease of a public-house, with an option to purchase at the end of the term at a fixed price, from A., who from time to time, to a small extent, employed him as his solicitor. After A.'s death his widow and executors brought an action to have the lease set aside on the grounds that the lease was not a proper one, in that it did not contain any power of re-entry on the part of the lessor on the lessee making default in payment of rent, that C. acted as solicitor for both parties in the transaction, and that A. had no independent advice.

HELD—that at the time of the transaction C. had no personal influence over A., and that C. was not acting as his solicitor *in hac re*.

ALLISON v. CLAYHILLS, 97 L. T. 709—Parker, J.

**V. COSTS.****(a) General.**

3. *London Agent—Retainer by Country Solicitor—Clerk to Urban District Council—Promise to Pay London Agent's Bill by the District Council—Estoppel—Contract—Ratification.*—In 1903 R., a solicitor, as clerk to the H. District Council, instructed B. L. & Co. to take certain proceedings in London in pursuance of a resolution of the council. The proceedings were accordingly taken, and conducted by B. L. & Co., as the London agents of R. B. L. & Co.'s bill of costs was taxed and paid on that footing. Upon a subsequent arbitration in the same matter B., as the successor of B. L. & Co., acted as solicitor upon R.'s instructions without any fresh retainer. R. became financially embarrassed. B. sent in his bill direct to the council. They, by a letter dated October 30th, 1906, instructed B. to send in his bill to the clerk of the council to be taxed, but after nine months refused to pay the bill, on the ground that B.'s claim was against R., to whom the council were liable.

HELD—that the council were not estopped by their letter of October 30th, 1906, nor did this letter amount to a contract, or ratification of any contract, to pay, and, in the absence of any evidence of retainer by the council of B. as their solicitor, they were not liable to have his bill taxed as against themselves.

RE BAKER, 52 Sol. Jo. 173—Joyce, J.

**(b) Bill of Costs.**

4. *Wife's Petition for Judicial Separation—Costs against Husband—Party and Party Costs—Subsequent Bill for Extra Solicitor and Client Costs—Items of Earlier Bill not Included—Insufficiency—Bill including Costs of Proceedings before Justices—Misdescription of Items—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.*—The plaintiffs acted as solicitors for the defendant's wife in a petition by her for judicial separation. The petition was dismissed, but the defendant

**Costs.—Continued.**

was ordered to pay his wife's costs as between party and party. The plaintiffs delivered to the defendant a party and party bill of costs, which was taxed and paid. The wife subsequently took proceedings against the defendant under the Summary Jurisdiction (Married Women) Act, 1895, and the Justices made a separation order and an order for the payment to her of a weekly sum and three guineas for costs. These costs were paid. The plaintiffs then delivered to the defendant a bill of costs, which was headed "In the Probate, Divorce, and Admiralty Division," and which consisted of extra costs as between solicitor and client in the proceedings for judicial separation, and there were also certain items of costs for advising the wife as to her differences with her husband. The items allowed on taxation in the party and party bill of costs were not included in the bill. At the end of the bill there were a number of items of costs in connection with the proceedings before the Justices, this part of the bill not being separately headed, but the whole running on continuously.

Pickford, J., HELD—(1) that the bill was not invalid on the ground that it did not contain the items allowed in the party and party bill; (2) that it was not invalid on the ground that the items of costs in connection with the proceedings before the Justices were not separately headed, inasmuch as the bill gave all necessary information to the defendant; but (3) that the costs of the magisterial proceedings could not be recovered.

*Cole v. James* ([1897] 1 Q. B. 418; 66 L. J. Q. B. 249; 61 J. P. 230; 76 L. T. 119; 45 W. R. 317—Div. Ct.) followed on this point.

On appeal as to the first point, HELD—that the bill was insufficient because it did not include the party and party costs. Moreover, *quære* whether, as the wife's suit had failed, her solicitor could recover any further costs.

Decision of Pickford, J. ([1908] 1 K. B. 590; 77 L. J. K. B. 406; 98 L. T. 45; 24 T. L. R. 233) reversed on the main point.

COBBETT AND OTHERS *v.* WOOD, [1908] 2 K. B. [420; 77 L. J. K. B. 878; 99 L. T. 482; 24 T. L. R. 615; 52 Sol. Jo. 517—C. A.

**(e) Charging Orders.**

[No paragraphs in this vol. of the Digest.]

**(d) Taxation.**

5. *Agreement in Writing—Contentious Business—Signature—Attorneys and Solicitors Act, 1870* (33 & 34 Vict. c. 28), s. 4.—Upon the taking of an account between a solicitor and clients, the former claimed a certain sum as due under a memorandum in which the clients agreed at that sum the balance of costs due for contentious business previously done by the solicitors. The memorandum was signed by the clients, and was referred to in a letter to the clients from the solicitors.

HELD—that the agreement must be referred

to the taxing Master for examination, since (1) it must be treated as signed by both parties, and (2) even if it were only signed by the clients, such signature would satisfy sect. 4 of the Attorneys and Solicitors Act, 1870.

*Pontifex v. Farnham* ((1893) 62 L. J. Q. B. 344; 41 W. R. 238—Div. Ct.) doubted.

BAKE *v.* FRENCH (No. 2), [1907] 2 Ch. 215; 76 [L. J. Ch. 605; 97 L. T. 750—Warrington, J.

6. *Common Order to Tax Obtained by Solicitors—Motion to Discharge Order—Time—Master's Authority to Decide Question of Retainer upon Taxation—Practice.*—Certain clients applied for and obtained an extension of time to carry in a bill under a common order to tax costs which had been obtained by the solicitors, and allowed nearly two months to elapse after service of the order. They then moved to discharge the order on the ground that there was no retainer.

Motion refused. A taxing Master has authority to decide the question of retainer in such case upon taxation.

RE GRAHAM AND WIGLEY, 52 Sol. Jo. 684— [Joyce, J.

7. *Counsel's Fees—Counsel Advising after Action Begun—Right to be Briefed at Trial—Objection by Client—Right of Solicitor to Charge Fee to Client.*—The rules of etiquette as between members of the legal profession are not binding upon clients. Therefore where a counsel had advised a client during the progress of an action, and the client expressly told the solicitor not to brief the counsel at the trial, but the solicitor, acting under Resolution 20 as to Bar Etiquette (Annual Practice, 1908, vol. 2, p. 743), did so and paid him his fees:—

HELD—that the solicitor could not, upon taxation, charge his client with such fees.

IN RE HARRISON, [1908] 1 Ch. 282; 77 L. J. [Ch. 143; 97 L. T. 902; 24 T. L. R. 118—Parker, J.

8. "Disbursements"—*Must be Paid before Bill Delivered—Solicitors Act, 1843* (6 & 7 Vict. c. 73), s. 37.—In the case of the taxation of a bill of costs under the Solicitors Act, 1843, "disbursements" can only be allowed if the sums in question have been actually paid before delivery of the bill.

SADD *v.* GRIFFIN, [1908] 2 K. B. 510; 77 L. J. [K. B. 775; 99 L. T. 502; 24 T. L. R. 715; 52 Sol. Jo. 567—C. A.

9. *London Solicitor Instructing Country Solicitor—Relation of Solicitor and Client—Express Instructions—Reasonable Steps to Comply with Instructions—Discretion of Taxing Master.*—Country solicitors incurred considerable disbursements, and made a substantial charge in respect of an unsuccessful attempt to effect service on behalf of a London solicitor against a client of the latter. Upon taxation the whole of these disbursements and charges were disallowed, on the ground that they were unreasonably incurred.

HELD—that the taxation was between solicitor and client, and the service having been attempted



**Costs—Continued.**

upon express instructions, the master had no discretion to disallow the items entirely.

RE EDDOWES AND SONS, 52 Sol. Jo. 600 — [Joyce, J.]

**10. Mortgages from Client—Accounts Settled—Profit Costs—Overcharges for Interest—Re-opening Accounts—Limitation Act, 1623** (21 Jac. 1, c. 16).—A solicitor since 1883 financed a client, who was a builder, advancing him money and taking mortgages upon the land acquired and built upon as security for his advances with interest and his costs. The client was not represented by any other solicitor. From time to time accounts were submitted to the client, and they were agreed to and signed by him, some of them more than six years before action. In the accounts the solicitor always charged profit costs in respect of the mortgages to himself, but no bills of costs were rendered. There were also certain instances of interest overcharged by error. The solicitor died in 1905. In an action by the executors for foreclosure of two of the mortgages the client counterclaimed to reopen the accounts on the ground of overcharges.

HELD—that, considering the relation between the parties and the character of the errors, from which it might be expected that the errors proved in some cases would appear in all, the client was entitled to the relief claimed in respect of all the accounts; that the Statute of Limitations did not apply; and that the client was entitled to have the solicitor's costs charged in such accounts taxed upon the footing that the solicitor was not entitled to charge profit costs in respect of any mortgage before the Mortgagees' Legal Costs Act, 1895, regard being had in such taxation to any agreement as to costs appearing by such accounts to have been come to between the parties.

CHEESE *v.* KEEN, [1908] 1 Ch. 245; 77 L. J. Ch. 163; 98 L. T. 316; 24 T. L. R. 138 — Neville, J.

**11. Order by Consent—Practice—Form of Order—Costs of Reference.**—Under a "consent order" for taxation of costs as distinguished from the common form of order under the Solicitors Act, 1843, the taxing officer has no power to himself deal with the costs of the reference to him.

On the application of a client, who claimed that his solicitor had obtained a consent order when he was intended to obtain a common form order, the Court refused to alter the form of order, but directed the costs of the application to stand over till the result of the taxation was known, when they could be dealt with together with the costs of the reference.

IN RE BURN AND BERRIDGE, 99 L. T. 606, [1908] W. N. 157—Eady, J.

**12. Taxation after Payment—Circumstances Justifying Order for—Agreement by Third Party to Pay a Solicitor's Costs Against his Client—Jurisdiction of Master to Construe Agreement.**—After a solicitor's bill has been paid taxation may

be ordered on the ground of "special circumstances," and that phrase is not confined to cases where overcharge, fraud or excessive pressure is proved, but includes any circumstances which a Judge in the exercise of his discretion considers sufficiently exceptional to justify taxation.

IN RE NORMAN (1886) 16 Q. B. D. 673; 55 L. J. Q. B. 202; 54 L. T. 143; 34 W. R. 313—C. A.) followed.

Where a third party has agreed to pay a bill of costs due to a solicitor from a client the taxing Master has jurisdiction to construe the agreement for purposes of the taxation; therefore a dispute as to its construction does not prevent an order being made for taxation.

IN RE HIRST AND CAPES, [1908] 1 K. B. 982; [77 L. J. K. B. 930; 52 Sol. Jo. 684—C. A.]

Affirmed with slight variation as to the cost incurred in C. A., [1908] A. C. 416; 77 L. J. K. B. 938—H. L.

**13. Taxation after Payment—Costs Paid under Pressure—Payment under Protest—Special Circumstances—Solicitors Act, 1843** (6 & 7 Vict. c. 73), ss. 38, 41.—The respondent, as solicitor for a lessor, refused to hand over an executed counterpart of an agreement for a lease, and threatened to let the land to parties other than the lessee unless his costs as such solicitor were paid. The lessee's solicitors were willing to pay the costs subject to the determination of a question whether these were to be itemised or upon scale fees. Ultimately, the respondent insisting on his item costs in full before completion, the lessee's solicitors paid them under protest, and two days afterwards issued a summons for taxation.

HELD—that there were special circumstances in which taxation would be ordered although the costs had been paid. Observations on acceptance of moneys paid under protest.

RE R. E. F., 53 Sol. Jo. 83—Neville, J.

**14. Taxation after Payment—"Special Circumstances"—Payment under Protest and "Reserving Rights"—Solicitors Act, 1843** (6 & 7 Vict. c. 73), s. 41.—Clients, in order to obtain possession of papers which they required at once to complete a mortgage transaction, paid a bill of costs under protest and reserving their "rights."

HELD—that under the "special circumstances" payment did not preclude them from obtaining an order for taxation of the bill.

RE LEGGATTS AND CARRUTHERS, 53 Sol. Jo. 84 [—Eve, J.]

**(e) Solicitors Remuneration Act, 1881.**

**15. Vendor and Purchaser—Several Contracts—One Title—One Conveyance—Scale Fee—General Order, Sched. I., Part 1, r. 8.**—The owners of five houses granted separate leases of them on the same day to the same lessee. Each lease gave him an option to purchase; and if he exercised it, he was to pay all legal and other expenses of the lessors as vendors, it being

**Costs—Continued.**

the intention that the lessors should be put to no expense whatever in respect of the conveyance.

The lessee exercised his five options by one letter, received one abstract of title, and asked for one conveyance including all the houses. The vendors' solicitors claimed to charge a scale fee for deducing title and perusing and completing conveyance in respect of each house.

HELD—that they could not do so.

IN RE SIMMONS' CONTRACT, [1908] 1 Ch. 452; [77 L. J. Ch. 215; 98 L. T. 185—Parker J.]

**VI. COVENANT IN RESTRAINT OF TRADE.**

[No paragraphs in this vol. of the Digest.]

**VII. LIABILITY.**

[No paragraphs in this vol. of the Digest.]

**VIII. LIEN.**

And see BANKRUPTCY, No. 31.

**16. Lien on Client's Papers for Costs—Waiver of by Taking Security—Expressed Intention to Waive Lien.**—A solicitor taking from his client some security for his general costs waives his general lien over his client's papers if the security taken is inconsistent with the retention of the lien, unless he expressly reserves his lien; and per Kennedy, L.J., *semble*, whether it is inconsistent or not, he ought to make it clear to his client that he intends to reserve his lien.

A solicitor taking from his client some security for particular costs does not waive his general lien.

IN RE MORRIS AND OTHERS, [1908] 1 K. B. 473; [77 L. J. K. B. 265; 98 L. T. 500—C. A.]

**17. Company being Wound up—Liquidator—Documents in Solicitor's Hands and Subject to Lien before Date of Winding-up Order.**—A solicitor was conducting an action for a company against three of its directors for a declaration that they had acted since becoming unqualified and for penalties and an injunction. Whilst the action was in progress a winding-up order was made. The liquidator continued the action but eventually changed his solicitor.

HELD—that the old solicitor had a lien against the liquidator for his unpaid costs upon those documents in the action which were in his hands at the date of the winding-up order.

IN RE RAPID ROAD TRANSIT CO., [1908] W. N. [222; 53 Sol. Jo. 83—Neville, J.]

**18. Company being Wound up—Order to Produce Documents—Without Prejudice to Lien.**—On the motion of the official liquidator of a company which was being wound up by the Court, the law agents of the company were ordered to produce all books, title deeds, papers, and other deeds or documents in their custody relating to the company "without prejudice to the lien claimed by them."

GRAHAM v. WHITE AND PARK, [1908] S. C. 309—Ct. of Sess.

**19. Company being Wound up—Production of Title Deeds—Reservation of Solicitor's Lien.**—Where a solicitor, who has acted for a com-

pany, and is its creditor for professional services, has, in obedience to an order under sect. 115 of the Companies Act, 1862, made in the liquidation of the company, produced the company's title deeds without prejudice to his lien, the mere reservation of his lien does not give him a preferential claim in the winding-up unless it can be shown that, had the title deeds not been ordered to be delivered up, he would have had an effectual lien over them for his account.

ROBIE v. STEVENSON, [1908] S. C. 559—Ct. of [Sess.]

**IX. MISCONDUCT.**

**20. Unqualified Person—Striking off Rolls—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 32.**—The test of an offence under sect. 32 of the Solicitors Act, 1843, is whether there was such an agreement that the unqualified person kept wholly or in part the conduct and control of the business carried on. The statute is imperative, and the prescribed penalty of striking off the rolls must follow the commission of the offence. IN RE TWO SOLICITORS, *Times*, July 30th, 1908 [—Div. Ct.]

**X. PRACTICE.**

[No paragraphs in this vol. of the Digest.]

**XI. SOLICITOR-TRUSTEE.**

[No paragraphs in this vol. of the Digest.]

**XII. UNDERTAKINGS.**

**21. Undertaking—Whether Personal or not.**—An undertaking by solicitors (defendant's) in these terms: "In consideration of you (plaintiffs' solicitors), on behalf of your clients, agreeing to the proceedings . . . being adjourned for one week . . . we on behalf of our clients undertake to apply at the opening of the Court" for certain cross-summonses "and to pay to you on behalf of your clients whatever balance may be adjudged by the magistrate to be due to your clients," is a personal undertaking by the solicitors, for if it were not so the undertaking would mean nothing, the clients being liable by the order of the magistrate.

IN RE C. AND ANOTHER, 53 Sol. Jo. 119—[Div. Ct.]

**XIII. UNQUALIFIED PERSONS.**

[No paragraphs in this vol. of the Digest.]

**SOUTH AUSTRALIA.**

See DEPENDENCIES AND COLONIES.

**SPECIFIC PERFORMANCE.**

See also AUCTIONS; COUNTY COURTS; DEPENDENCIES AND COLONIES, No. 9; LANDLORD AND TENANT; SALE OF LAND; STOCK EXCHANGE, No. 3.

**1. Agreement for Lease in Consideration of Contract to Rebuild and Repair—Undefined**

**Specific Performance—Continued.**

*Works—Damages an Adequate Compensation.*—The defendant agreed to take from the plaintiff a lease of certain premises and within twelve months from the date of the agreement to expend the sum of £600 in such substantial repairs and improvements as were mentioned—namely, to take down, rebuild, and repair such portions of the premises as the plaintiff's architect should direct, under his direction, and to his satisfaction. The plaintiff claimed specific performance of the agreement to rebuild and repair the premises and damages for the defendant's failure to carry out the agreement.

HELD—that it was not a case for specific performance, but for an inquiry as to damages.  
RUSHBROOKE *v.* O'SULLIVAN, [1908] 1 I. R. 232—M. R.

*2. Option to Purchase — "Repayment" of Part of the Purchase Money to be Secured by Mortgage—Not an Agreement for a Loan.*—An agreement giving an option to purchase property, part of the purchase money to be paid at the time of purchase and the "repayment" of the balance to be secured by mortgage, is not in any true sense a contract to lend and borrow money such that specific performance of it will not be granted.

STARKEY *v.* BARTON, 43 L. J. N. C. 774—[Parker, J.]

**SPIRITS.**

See FOOD AND DRUGS; INTOXICATING LIQUORS; REVENUE.

**SPORT AND SPORTING.**

See GAME.

**STAMPS AND STAMP DUTIES.**

See REVENUE.

**STATUTES.**

	COL.
I. CONSTRUCTION . . . . .	617
II. RETROSPECTIVE OPERATION . . . . .	618

**I. CONSTRUCTION.**

*1. Exemption from Taxation—Consolidating Act—Private Act of a Public Body—Crown Bound by Implication—Purpose of a Saving Clause.*—Discussion as to the effect of a section exempting from rates and taxes in the consolidating and private Act of the Thames Con-

servancy, and as to the Crown being bound although not expressly named.

STEWART *v.* THAMES CONSERVATORS, [1908] 1 [K. B. 893; 77 L. J. K. B. 396; 72 J. P. 181—Bray, J.]

**II. RETROSPECTIVE OPERATION.**

*2. Trade Union — Action Against — Commenced in 1905—Trade Disputes Act, 1906 (6 Edw. 7, c. 47), s. 4—Retrospective Application.*—It is not reasonable to suppose that, where rights have accrued and become vested, the legislature, which deals with futurity, interferes with such vested rights unless the intention to do so is expressed in clear terms.

Where a writ was issued against a trade union in 1905, the Trade Disputes Act, 1906, sect. 4, affords no bar to the action.

No intention to vary the rights of the parties to a pending action is to be found in any part of the Trade Disputes Act, 1906.

SMITHIES *v.* NATIONAL ASSOCIATION OF OPERATIVE PLASTERERS AND OTHERS, *Times*, December 22nd, 1908—C. A.

**STATUTE OF FRAUDS.**

See CONTRACT; EVIDENCE; SALE OF GOODS; SALE OF LAND.

**STATUTES OF LIMITATIONS.**

See LIMITATION OF ACTIONS; REAL PROPERTY AND CHATTELS REAL.

**STATUTE OF USES.**

See REAL PROPERTY AND CHATTELS REAL; SETTLEMENTS; TRUSTS AND TRUSTEES; WILLS.

**STOCK EXCHANGE.**

	COL.
I. RULES AND CUSTOMS . . . . .	619
II. BROKERS AND CLIENTS.	
(a) In General . . . . .	619
(b) Carrying Over . . . . .	620
(c) Closing Accounts . . . . .	620
[No paragraphs in this vol. of the Digest.]	
(d) Defaulting Brokers . . . . .	620
[No paragraphs in this vol. of the Digest.]	
See also AGENCY; BANKRUPTCY; CONTRACTS; GAMING AND WAGERING; MORTGAGE.	



## I. RULES AND CUSTOMS.

1. *Rules—Position of Non-members—Mortgage of Shares—Realising Security—Taking Shares at Price Fixed by Official Assignee—Rules 152, 160.*—By r. 152 of the London Stock Exchange Rules, in every case of failure the official assignees shall fix the prices current in the market, at which prices all members having accounts open with the defaulter shall close their transactions. By r. 160, in the case of a loan upon securities valued at less than the market price, the lender shall realise his securities within three days, or take them at a price to be fixed by the official assignees; and if the security be insufficient, the difference may be proved for against the defaulter's estate.

\* The plaintiff, who was not a member of the Stock Exchange, through a broker procured from the defendant, a jobber, a loan upon the security of certain shares, upon condition that the shares were sold for the next settling-day. The defendant, when he made the advance, knew that the broker was acting for an undisclosed principal. The plaintiff did not put the broker in funds to pay off the loan, and upon default being made the defendant was compelled to take over the shares at the price fixed by the official assignees. The shares subsequently rose in price, and the defendant sold them and realised a profit.

HELD—that rr. 152 and 160 only bound members of the Stock Exchange, and that the defendant was liable to account to the plaintiff for any surplus over principal, interest, and costs.

PONSOLLE v. WEBBER, [1908] 1 Ch. 254; 77 [L. J. Ch. 253; 98 L. T. 375; 24 T. L. R. 190—Neville, J.

## II. BROKERS AND CLIENTS.

### (a) In General.

2. *Indemnity—Purchase of Stocks—Commission—Authority of Broker—Commission of London Broker not Disclosed—Repudiation of Whole Contract.*—The defendant employed the plaintiff, a country stockbroker, to purchase for her certain shares, and the plaintiff, in accordance with a circular which he had previously sent to his clients that he made arrangements for that purpose with a London firm of stockbrokers, instructed a broker on the London Stock Exchange to buy the shares. The London broker bought the shares from a jobber at 98 $\frac{7}{16}$ , and sent the plaintiff a bought note stating he had bought the shares at 98 $\frac{3}{4}$  net. The word "net" meant that the price included the London broker's remuneration, the latter having, as between himself and the plaintiff, no fixed scale of commission. The plaintiff sent to the defendant a contract note, which stated that he had bought on her account the shares at 98 $\frac{3}{4}$ , and also charged 7s. 6d. for commission and 1s. for stamp. In an action by the plaintiff against the defendant to recover the balance of the moneys upon the above purchase, no custom was proved for London brokers to add, without disclosing the fact, a reasonable sum for commission.

HELD (Farwell, L. J., dissenting)—that the

plaintiff had made contracts with the London brokers as principals, instead of with jobbers through the brokers as agents, and in so doing had disregarded the authority given to him by the defendant; that, therefore, he was not entitled to an indemnity from her and could not succeed.

Decision of Bucknill J. ([1908] 2 K. B. 82; 77 L. J. K. B. 550; 98 L. T. 418; 24 T. L. R. 484) affirmed.

JOHNSON v. KEARLEY, [1908] 2 K. B. 514; 77 [L. J. K. B. 904; 99 L. T. 506; 24 T. L. R. 729—C. A.

### (b) Carrying Over.

3. *Date of Completion—Broker and Client—Vendor and Purchaser—Specific Performance.*—A vendor and a purchaser of shares in a company agreed that the shares should remain unpaid for, and should be "carried over" on an account delivered on certain days called account or pay days, subject to payment of a stated percentage by the purchaser, and to a payment by the vendor or the purchaser (as the case may be) of the difference between the price of the shares on the last account day and their price on the day when the account was delivered. The vendor having died during the currency of this arrangement:—

HELD—that the day for completing the contract was the first account day following the death of the vendor, unless such day had been altered by agreement between the parties or at the request or to suit the convenience of one of them. Specific performance of such an agreement will not subsequently be granted at the suit of the purchaser where the shares can be obtained in the market.

Damages for breach of such an agreement will not be given where the contract price of the shares exceeded their value on the day for completion.

RE SCHWABACHER, STERN v. SCHWABACHER, [98 L. T. 127—Parker, J.

### (c) Closing Accounts.

[No paragraphs in this vol. of the Digest.]

### (d) Defaulting Brokers.

[No paragraphs in this vol. of the Digest.]

## STOPPAGE IN TRANSIT.

See CARRIERS; SALE OF GOODS; SHIPPING AND NAVIGATION.

## STREETS.

See HIGHWAYS, STREETS AND BRIDGES; METROPOLIS.

## STREET BETTING.

See GAMING AND WAGERING.

## STREET RAILWAYS.

See TRAMWAYS AND LIGHT RAILWAYS.

## STREET TRAFFIC.

I. HACKNEY CARRIAGES	COL. 621
II. MOTOR CARS.	
(a) Offences	621
(i.) <i>Driving and Speed</i>	621
(ii.) <i>Emission of Smoke</i>	624
(iii.) <i>Construction</i>	625
(b) Appeals	625
[No paragraphs in this vol. of the Digest.]	
(c) Royal Parks	625
[No paragraphs in this vol. of the Digest.]	
III. MISCELLANEOUS	625
[No paragraphs in this vol. of the Digest.]	
And see HIGHWAYS; METROPOLIS; NEGLECTANCE; NUISANCE.	

### I. HACKNEY CARRIAGES.

1. *Omnibus—Prescribed Distance—Starting from Outside—Bringing Passengers Within—Plying for Hire—Town Police Clauses Act, 1847* (10 & 11 Vict. c. 89), s. 45—*Town Police Clauses Act, 1889* (52 & 53 Vict. c. 14), s. 3.—A carriage, which was not licensed to ply for hire in the urban district of M., was run to and from S. Road in the city of Liverpool, and the Elephant Hotel in M. The proprietor charged threepence between S. Road and M., twopence between S. Road and the boundary between the urban district of M. and Liverpool, and no charge was made between M. and the said boundary. The carriage sometimes stood and waited on the highway at the Elephant Hotel, and sometimes commenced the return journey towards Liverpool immediately, and at the same point passengers entered the carriage for the purpose of the journey towards Liverpool. Signs outside the carriage indicated the destination thereof, and intending passengers, on inquiry, were informed of its destination.

HELD—that the above facts were evidence that the carriage was standing and plying for hire in the urban district of M. without having obtained a licence to ply for hire in the urban district of M., and that the proprietor was properly convicted.

R. v. FLETCHER, 72 J. P. 249; 98 L. T. 749; [6 L. G. R. 583—Div. Ct.]

### II. MOTOR CARS.

#### (a) Offences.

##### (i.) *Driving and Speed.*

2. *Conviction—Indorsement of Licence—Parks Regulation Act, 1872* (35 & 36 Vict. c. 15), s. 4—*Motor Car Act, 1903* (3 Edw. 7, c. 36), s. 4.—The offence of driving a motor car in a royal park at a speed greater than that fixed by regulations made under the Parks Regulation Act, 1872, is, so far as indorsement upon licences is concerned, in the same position

as the offence of exceeding a speed limit fixed by the Motor Car Act, 1903. The exception in sect. 4 of that Act as to first and second convictions not justifying indorsement implies to such an offence.

R. v. MARSHAM, EX PARTE CHAMBERLAIN, [[1907] 2 K. B. 638; 76 L. J. K. B. 1036; 71 J. P. 445; 97 L. T. 396; 23 T. L. R. 629; 5 L. G. R. 998; 21 Cox, C. C. 510—Div. Ct.]

3. *Dangerous Speed—Aiding and Abetting—Conviction of Principal—Liability of Owner of Car—Summary Jurisdiction Act, 1848* (11 & 12 Vict. c. 43), s. 5—*Accessories and Abettors Act, 1861* (24 & 25 Vict. c. 94), s. 8.—Upon an appeal to Quarter Sessions by the owner of a motor car against a summary conviction on a charge of having driven the car along a highway at a speed dangerous to the public, there was a conflict of evidence as to whether at the crucial moment the owner of the car was himself actually driving or was sitting on the front seat next to a lady who was driving with his consent and approval. Quarter Sessions found that the owner must have known that the speed was dangerous to the public, that he was in control of the car, and that he could and ought to have prevented the driver from driving at such dangerous speed, but that he did not interfere in any way. They affirmed the conviction, being of opinion that the owner (if not driving himself) was aiding and abetting the commission of the offence.

HELD—that, as the offence was a misdemeanor, the owner of the car, even if not actually driving the car, but merely aiding and abetting the commission of the offence, was liable to be convicted summarily as a principal, and had been properly so convicted.

Benford v. Sims ([1898] 2 Q. B. 641; 67 L. J. Q. B. 655; 47 W. R. 46; 78 L. T. 718—Div. Ct.) approved.

DU CROS v. LAMBOURNE, [1907] 1 K. B. 40; [76 L. J. K. B. 50; 70 J. P. 525; 95 L. T. 782; 23 T. L. R. 3; 5 L. G. R. 120; 21 Cox, C. C. 311—Div. Ct.]

4. *Driving in a Manner Dangerous to the Public—Speed Over Twenty Miles per Hour—Conviction for Former Offence—Bar to Conviction for Latter—Motor Car Act, 1903* (3 Edw. 7, c. 36), ss. 1 (1) and 9 (1).—The respondent was summarily convicted under sect. 1 (1) of the Motor Car Act, 1903, of driving a motor car in a manner dangerous to the public. In deciding to convict, the magistrate took into consideration, besides other circumstances, the question of speed, which he considered to be an element of danger, and which, according to the evidence of the police, was shown by their stop-watches to have been thirty-three and a half miles per hour.

HELD (Jelf, J., dissenting)—that the conviction was a bar to the respondent being subsequently convicted on the same facts of driving at over twenty miles per hour contrary to sect. 9 (1) of the same Act.

WELTON v. TANEBORNE, 72 J. P. 419; 24 [T. L. R. 873; 6 L. G. R. 891—Div. Ct.]

**Motor Cars—Continued.**

**5. Exceeding Speed Limit—Evidence—Identity of Driver—Contents of Licence—Notice to Produce—Secondary Evidence—Motor Car Act, 1903** (3 Edw. 7, c. 36), ss. 3 (4), 9 (1).—On the prosecution of the driver of a motor car for exceeding the speed limit fixed by sect. 9 (1) of the Motor Car Act, 1903, it is not necessary to give the defendant notice to produce his licence, in order to let in evidence as to its contents by the police constable who stopped the car, and to whom the licence was produced by the driver at the time.

MARSHALL *v.* FORD, 72 J. P. 480; 6 L. G. R. [1120—Div. Ct.]

**6. Exceeding Speed Limit—Intended Prosecution—Warning—Sufficiency of—Motor Car Act, 1903** (3 Edw. 7, c. 36), s. 9 (2).—A statement by a constable who stops the driver of a motor car that he thinks that the driver is exceeding the speed limit, but that if, after he had compared the time with that taken by another constable three miles away, it appeared that the driver had not exceeded the speed limit over those three miles he would hear nothing further about it, is a sufficient warning to the driver of an intended prosecution to satisfy the requirements of sect. 9 (2) of the Motor Car Act, 1903.

JESSOP *v.* CLARKE, 72 J. P. 358; 99 L. T. 28; 24 [T. L. R. 672; 6 L. G. R. 586—Div. Ct.]

**7. Obstruction of Highway—Offence in Connection with the Driving of a Motor Car—Highway Act, 1835** (5 & 6 Will. 4, c. 50), s. 72—*Motor Car Act, 1903* (3 Edw. 7, c. 36), s. 4 (1).—Leaving a motor car unattended so as to cause an obstruction on a highway is not an offence in connection with the driving of a motor car, and, therefore, a conviction of the driver for so doing cannot be indorsed on his licence under sect. 4 (1) of the Motor Car Act, 1903.

R. *v.* LYNDON, 72 J. P. 227; 6 L. G. R. 890—[Div. Ct.]

**8. Warning as to "Traps"—Obstruction of in Execution of Duty—Persons Warning Motorists of Presence of Police—Prevention of Crimes Act, 1871** (34 & 35 Vict. c. 112), s. 12, and *Prevention of Crimes (Amendment) Act, 1885* (48 & 49 Vict. c. 75), s. 2.—Two police constables were employed in the execution of their duty in timing the speed of motor cars passing along a road on which certain measured distances had been marked off in order to detect persons driving motor cars at an illegal speed. While the constables were so employed, the respondent on several occasions, by means of signals and, in one instance, by calling out "Police trap," warned the drivers approaching the measured distances. In each case the driver slackened speed on being warned; but there was no finding in the case that the cars were being driven at a speed in excess of the legal limit. The respondent was not acting in concert with the drivers of the cars, nor was he in any way connected with any person or body of persons interested in the driving of motor cars.

HELD—that the respondent was not guilty of obstructing the constables in the execution of

their duty; but *semble*, per Alverstone, L. C. J., and Darling, J., obstruction of a constable in the execution of his duty need not necessarily be physical obstruction.

BASTABLE *v.* LITTLE, [1907] 1 K. B. 59; 76 [L. J. K. B. 77; 71 J. P. 52; 96 L. T. 115; 23 T. L. R. 38; 5 L. G. R. 279; 21 Cox, C. C. 354—Div. Ct.]

(ii.) *Emission of Smoke.*

**9. Construction—Temporary or Accidental Cause—Evidence—Highways and Locomotives (Amendment) Act, 1878** (41 & 42 Vict. c. 77), s. 30—*Locomotives on Highways Act, 1896* (59 & 60 Vict. c. 36), s. 1—*Heavy Motor Car Order, 1904*, art. III.—The appellants were summoned under sect. 30 of the Highways and Locomotives (Amendment) Act, 1878, for using on a highway two motor engines which did not so far as practicable consume their own smoke. It was proved that on the highway the engines had emitted an excessive quantity of smoke and steam while they were in charge of the appellants. Evidence was given on behalf of the appellants that the engines were so constructed that no smoke or visible vapour was emitted therefrom except from some temporary or accidental cause. This evidence was not contradicted on the part of the respondent. The justices were of opinion that the emission of smoke and steam was due, not only to the carelessness of the appellants, but also to the fact that on the occasion in question the engines did not so far as practicable consume their own smoke, and they were not satisfied that the emission was due to a temporary or accidental cause within the meaning of sect. 1 of the Locomotives on Highways Act, 1896. They therefore convicted the appellants.

HELD—that as the justices had not found upon the evidence that the locomotives were so constructed that no smoke would be emitted except from a temporary or accidental cause, they did not come within the exemption contained in sect. 1 of the Locomotives on Highways Act, 1896, and the appellants were rightly convicted.

HINDLE AND PALMER *v.* NOBLETT, 72 J. P. 373; [99 L. T. 26; 6 L. G. R. 825—Div. Ct.]

**10. Excess of Lubrication—Carelessness—Highways and Locomotives (Amendment) Act, 1878** (41 & 42 Vict. c. 77), s. 30—*Locomotives on Highways Act, 1896* (59 & 60 Vict. c. 36), s. 1.—On a summons against the owner of a motor car charging an offence under sect. 30 of the Highways and Locomotives (Amendment) Act, 1878, it was proved that the locomotive was a petrol-driven motor car less than three tons in weight, and that the emission of smoke was due to carelessness in admitting into the engine an excess of lubricating oil which thereby got burnt and caused the smoke.

HELD—that as the cause of the emission of smoke was not improper construction but a temporary one, namely, carelessness, the motor car was, by sect. 1 of the Locomotives on Highways Act, 1896, exempted from the operation of sect. 30 of the Highways and Locomotives (Amendment) Act, 1878, and that therefore no



**Motor Cars—Continued.**

offence had been committed against the latter section.

*R. v. WILBRAHAM*, 71 J. P. 336; 96 L. T. 712; [5 L. G. R. 764; 21 Cox, C. C. 441—Div. Ct.]

**11. Petrol Motor-Omnibus—Smokeless Engine—Constructed so as to Consume its own Smoke—Locomotives on Highways Act, 1896** (59 & 60 Vict. c. 36), s. 1—*Highways and Locomotives (Amendment) Act, 1878* (41 & 42 Vict. c. 77), s. 30.]—The appellants were summoned under sect. 30 of the Highways and Locomotives (Amendment) Act, 1878, for using on a highway a locomotive which did not consume so far as practicable its own smoke. The locomotive belonged to the appellants, and was a petrol motor-omnibus weighing less than five tons. It had a smokeless engine, but it was seen by the respondent to emit considerable quantities of smoke which smelt of burnt oil. This was caused by the negligence of the appellants' driver in supplying an excessive quantity of lubricating oil to the working parts. The magistrate found as a fact that the omnibus was so constructed that no smoke or visible vapour could be emitted therefrom except by reason of the driver's negligence.

**HELD**—that as the motor-omnibus weighed less than five tons, and was constructed that no smoke or vapour was emitted therefrom except from any temporary cause, it was exempted by sect. 1 of the Locomotives on Highways Act, 1896, as varied by art. 3 of the Heavy Motor Car Order, 1904, from the operation of sect. 30 of the Highways and Locomotives Act, 1878, and that, therefore, the appellants had committed no offence against the section under which they were summoned.

*STAR OMNIBUS CO. v. TAGG*, 71 J. P. 352; 97 [L. T. 481; 23 T. L. R. 488; 5 L. G. R. 808; 21 Cox, C. C. 519—Div. Ct.]

**(iii.) Construction.**

**12. "Two Independent Brakes"—Engine Locking Wheels—Motor Car (Use and Construction) Order, 1904, Art. II.—Heavy Motor Car Order, 1904.]**—The appellant was summoned for not having two independent brakes on the motor car he was driving. The motor car had one brake on the back wheels, and the only other brake was that obtained by using the engine so as to lock the wheels. The magistrate found that, although the engine could be used as a brake, it was not an independent brake, and convicted the appellant.

**HELD**—that the conviction was right.

*WILMOTT v. SOUTHWELL*, 72 J. P. 491; 25 [T. L. R. 22—Div. Ct.]

**(b) Appeals.**

[No paragraphs in this vol. of the Digest.]

**(c) Royal Parks.**

[No paragraphs in this vol. of the Digest.]

**III. MISCELLANEOUS.**

[No paragraphs in this vol. of the Digest.]

**SUBPENA.**

*See CRIMINAL LAW*, No. 8.

**SUBROGATION.**

*See EQUITY; INSURANCE*, Nos. 20, 21.

**SUCCESSION DUTY.**

*See DEATH DUTIES.*

**SUICIDE.**

*See CRIMINAL LAW AND PROCEDURE.*

**SUMMARY JURISDICTION.**

*See MAGISTRATES.*

**SUNDAY TRADING.**

*See TIME.*

**SUPPORT.**

*See DAMAGES; EASEMENTS; MINES.*

**SURETY.**

*See GUARANTEE AND INDEMNITY.*

**SURGEONS.**

*See MEDICINE AND PHARMACY.*

**SWINE FEVER.**

*See ANIMALS.*

**TAIL, TENANTS IN TAIL.**

*See REAL PROPERTY AND CHATTELS  
REAL; SETTLEMENTS.*

## TAXATION.

See DEATH DUTIES; INCOME TAX; INHABITED HOUSE DUTY; LAND TAX; REVENUE.

## TAXATION OF COSTS.

See ARBITRATION; COUNTY COURTS; PRACTICE AND PROCEDURE; SOLICITORS, ETC.

## TELEGRAPHS AND TELEPHONES.

	COL.
I. TELEPHONES . . . . .	627
II. SUBMARINE CABLE . . . . .	629

### I. TELEPHONES.

1. *Private Telegraph—Telegraph Act, 1869* (32 & 33 Vict. c. 73), s. 5.]—The exceptions relating to private telegraphs contained in sect. 5 of the Telegraph Act, 1869, extend to messages transmitted by a telegraph or telephone maintained for the private use of a defined person (including in that term a municipal corporation) to and from such person and an independent person with whom he may have business or private relations (*e.g.*, communications between a broker and a merchant, or between a corporation and a fire or police station), and are not limited to internal communications between different parts of the same establishment, provided that no charge is made in respect of such messages.

Decision of Eady, J. (76 L. J. Ch. 350; 71 J. P. 221; 96 L. T. 632; 23 T. L. R. 401) reversed.

HELD, FURTHER (Cozens-Hardy, M.R., dissenting), upon the construction of a licence granted by the Postmaster-General to the defendants with respect to the user of telephones, that it did not apply to any messages excepted by the statute from the Postmaster-General's monopoly so as to estop the defendants from relying upon the statutory exceptions.

POSTMASTER-GENERAL *v.* NATIONAL TELEPHONE CO., LD., [1908] 2 Ch. 172; 77 L. J. Ch. 707; 72 J. P. 307; 24 T. L. R. 665—C. A.

2. *Road Crossing Railway by Bridge—Laying Telephone Cable "Across a Railway"—Telephone Carried along Bridge—"Public Road" Crossing Railway—Licence of Postmaster-General—Telegraph Act, 1863* (26 & 27 Vict. c. 112), ss. 3, 6 (1) (4), 32.]—A telephone company, under a licence from the Postmaster-General, which gave them the right to exercise his powers of executing works "other than works under, in, upon, over, along, or across any railway or canal," carried a telephone cable, with the consent of a railway company and upon payment to them of £30 a year, under the surface of the footpath of

the road of a bridge which crossed over the railway. The road was a "public road" vested in and repairable by the local authority. The telephone company subsequently repudiated the agreement upon the ground that the consent of the railway company was not required.

HELD—that the cable was carried "over or across" the railway, because the proviso to sect. 32 of the Telegraph Act, 1863, though enabling the Postmaster-General himself to place any work in a public road without consent though it crosses a railway, does not provide that the work shall be deemed to be not carried across a railway; and that the telephone company were not entitled so to carry it without the consent of the railway company and upon payment of £30 a year.

SOUTH EASTERN RY. CO. AND SOUTH EASTERN [AND CHATHAM RY. CO.'S MANAGING COMMITTEE *v.* NATIONAL TELEPHONE CO., LD., [1908] 2 Ch. 50; 77 L. J. Ch. 679; 99 L. T. 339; 24 T. L. R. 579—Warrington, J.

Affirmed, on the ground that the defendants whilst enjoying the benefits of the agreement, and during its continuance, could not repudiate it, [1908] 2 Ch. 514; 77 L. J. Ch. 679; 24 T. L. R. 795—C. A.

3. *Wayleaves—Iron or Wooden Poles—Expense—Objection by Local Authority—Reasonableness—Telegraph Act, 1863* (26 & 27 Vict. c. 112), s. 12—*Telegraph Act, 1878* (41 & 42 Vict. c. 76) s. 3.]—It may not be a sufficient ground to justify the withholding by a local authority of their consent under sect. 12 of the Telegraph Act, 1863, required to be obtained by the Postmaster-General, that he proposes to erect painted wooden poles to carry the wires in a street instead of painted iron poles (which latter would entail considerably more expense), and that the local authority are of opinion that iron poles would be more in keeping with the amenities of the street.

It may be reasonable, however, for a local authority to require telephone wires to be laid underground in a street where the purchasers of the houses in that street are of a class that might reasonably have concluded that they were acquiring property in a district where telephone poles would not be erected in the footway in front of their premises.

IN RE POSTMASTER-GENERAL AND WOOLWICH [BOROUGH COUNCIL, 72 J. P. 186; 6 L. G. R. 509—Rly. and Can. Com.

4. *Way-Leaves—Poles in Footway—Objection by Local Authority—Telegraph Act, 1863* (26 & 27 Vict. c. 112), ss. 6, 9, 12—*Telegraph Act, 1878* (41 & 42 Vict. c. 76), ss. 3, 4, 5.]—Where a local authority withhold their consent under sect. 12 of the Telegraph Act, 1863, to the erection of poles for telephone wires in a street on the ground that in their opinion the poles will cause an obstruction to the thoroughfare, they must be prepared to establish that the obstruction caused will be substantial.

IN RE POSTMASTER-GENERAL AND WATFORD [URBAN DISTRICT COUNCIL, 72 J. P. 184; 52 Sol. Jo. 302; 6 L. G. R. 504—Rly. and Can. Com.

## 11. SUBMARINE CABLE.

5. *Cable Fouled by Ship's Anchor—Loss of Anchor—Agreement to Compensate Ship—Measure of Damages—Submarine Telegraph Act, 1885 (48 & 49 Vict. c. 49), Sched., art. 7.*—The defendants, a submarine telegraph company, having cables laid across the bed of the Yang-tsze-kiang River, with a view to the preservation of the cables from injury, issued a notice in which they stated that cables, when caught by ship's anchors, chains, etc., were often damaged or broken in the endeavour to free the gear, the latter at the same time being often lost or destroyed, and that they had therefore decided to compensate owners of vessels for loss of material from the above causes by adhering to the Submarine Telegraph Act, 1885, Sched., art. 7, according to which owners of vessels who could prove that they had sacrificed an anchor, etc., in order to avoid injuring a submarine cable, should receive compensation from the owner of the cable. The plaintiffs' vessel anchored in the Yang-tsze-kiang, and her anchor fouled the defendants' cable, and the captain, in order to avoid injuring the cable, slipped the anchor and chain. In consequence of the loss of the anchor the vessel was detained eight days at Shanghai, and damages were claimed in respect of this.

HELD—that the defendants were liable to compensate the plaintiffs for the sacrifice of the anchor and chain, but not under the circumstances of the case to pay further damages resulting from such sacrifice.

Decision of Bray J. (97 L. T. 410; 23 T. L. R. 330; 12 Com. Cas. 166) varied.

AGINCOURT STEAMSHIP CO. v. EASTERN [EXTENSION, AUSTRALASIA, AND CHINA TELEGRAPH CO. AND GREAT NORTHERN TELEGRAPH CO., [1907] 2 K. B. 305; 76 L. J. K. B. 884; 23 T. L. R. 490; 12 Com. Cas. 302; 10 Asp. M. C. 499—C. A.

## TENANT FOR LIFE AND REMAINDERMAN.

See RENT-CHARGES AND ANNUITIES; SETTLEMENTS; TRUSTS AND TRUSTEES; WILLS.

## TENDER.

See CONTRACT; MONEY; MORTGAGE.

## TESTAMENTARY CAPACITY.

See WILLS.

## THAMES, RIVER.

See METROPOLIS; SHIPPING AND NAVIGATION; WATERS AND WATERCOURSES.

## THEATRES, MUSIC-HALLS, AND SHOWS.

See CONTRACTS, No. 1, 8a, 15.

## THEFT.

See CRIMINAL LAW AND PROCEDURE.

## THREATS.

See CRIMINAL LAW AND PROCEDURE.

## TIME.

	COL.
I. COMPUTATION OF TIME . . .	630
II. SUNDAY OBSERVANCE . . .	630

And see COMPULSORY PURCHASE; LANDLORD AND TENANT; SHIPPING.

### I. COMPUTATION OF TIME.

1. *Compulsory Powers—Expiration of Time Limited for Exercise of Land already Acquired by Company—Common Law Right as Owners to Construct Railway thereon.*—A railway company were authorised to construct a railway; but a section of the Special Act provided that if the railway was not completed within five years then the powers given by the Act to the company for making and completing the railway were to cease.

HELD—that this proviso applied merely to powers which the company could only exercise by virtue of the Act; and that if the company before the end of the five years had lawfully acquired the right to use the necessary land, and were incorporated for the purpose of making the railway, they could do so even after the expiration of the five years under their common law powers.

*Tiverton and North Devon Ry. Co. v. Loosemore* ((1884) 9 App. Cas. 480; 53 L. J. Ch. 812; 48 J. P. 372; 50 L. T. 637; 32 W. R. 929.—H. L.) followed.

GREAT WESTERN RY. CO. v. MIDLAND RY. CO., [1908] 2 Ch. 455; 99 L. T. 189—Warrington, J.  
Affirmed, [1908] 2 Ch. 644; 77 L. J. Ch. 820—C. A.

### II. SUNDAY OBSERVANCE.

2. *Sunday Observance Act, 1677 (29 Car. 2, c. 7), s. 1—Shopkeeper—Ordinary Culling—*



**Sunday Observance—Continued.**

*Fourteen Years of Age—Evidence.*—The appellant was convicted under the Sunday Observance Act, 1677, of exercising certain worldly labour, business and work, the same not being a work of necessity or charity. The evidence showed that on a certain Sunday the appellant's shop was open from 1.20 to 10 p.m., and various persons entered and purchased different articles from the man in charge, who was selling on behalf of the appellant, but the appellant was not himself present. The appellant not only had the shop in question, but was a beer retailer in another town and a cycle repairer. No evidence was given for the appellant, and he was not personally present at the hearing. It was not proved that he was over fourteen years of age.

HELD—that there was no ground for interfering with the conviction.

CONNER v. QUEST, 71 J. P. 62; 96 L. T. 28; 21 [Cox, C. C. 345—Div. Ct.

**TITHES.**

See ECCLESIASTICAL LAW.

**TOLLS.**

See HIGHWAYS; MARKETS AND FAIRS; WATERS AND WATERCOURSES.

**TORTS.**

[No paragraphs in this vol. of the Digest.]

**I. IN GENERAL.**

[No paragraphs in this vol. of the Digest.]

**II. SLANDER OF TITLE.**

See also COUNTY COURTS; HUSBAND AND WIFE; JUDGMENT, No. 3; LOCAL GOVERNMENT; TRADE AND TRADE UNIONS.

**TRADE AND TRADE UNIONS.**

COL.

I. TRADE NAME . . . . .	632
II. TRADE CUSTOMS . . . . .	633
[No paragraphs in this vol. of the Digest.]	
III. TRADE COMBINATION . . . . .	633
[No paragraphs in this vol. of the Digest.]	
IV. RESTRAINT OF TRADE . . . . .	633
V. TRADE UNIONS.	
(a) Miscellaneous . . . . .	633
(b) Rules . . . . .	636
(c) Conspiracy . . . . .	637
[No paragraphs in this vol. of the Digest.]	
(d) Offences . . . . .	637

See also CRIMINAL LAW, No. 30; DEPENDENCIES AND COLONIES, No. 21.

**I. TRADE NAME.**

1. *Company—Similarity to Name of Another Company—Right of Individual to Transfer Name to Company—Injunction.*—A company, called John Cash and Sons, Ltd., carried on the business of cotton spinners, and John Harwood Cash was one of their managers. When he left the service of the company he, in conjunction with others, promoted and registered a company called Harwood Cash & Co., Ltd., with the object of carrying on a business similar to and at the same place as that carried on by the old company. The latter brought an action for an injunction to restrain the new company from carrying on their business under that name or under any name of which "Cash" formed a part without clearly distinguishing their business and goods from those of the old company.

HELD—that the new company had no legal right to the name of Cash; a company has not the rights which an individual of that name would have (except where an individual has transferred to it his business and goodwill), and as the use of the name might mislead, the old company were entitled to an injunction.

Tussaud v. Tussaud (1890) 44 Ch. D. 678; 59 L. J. Ch. 631; 62 L. T. 633; 38 W. R. 503—Stirling, J.) discussed and followed.

THE FINE COTTON SPINNERS' AND DOUBLERS' [ASSOCIATION, LD. AND JOHN CASH AND SONS, LD. v. HARWOOD CASH & CO., LD., [1907] 2 Ch. 184; 76 L. J. Ch. 670; 97 L. T. 45; 23 T. L. R. 537; 24 R. P. C. 533; 14 Manson, 285—Joyce, J.

2. *Similarity—Descriptive Name—Calculated to Deceive.*—An injunction to restrain the defendant company from using the word "electromobile" as part of their name was refused, the word being a descriptive word, and not having acquired a secondary meaning as denoting the plaintiff company.

ELECTROMOBILE CO., LD. v. BRITISH ELECTRO-MOBILE CO., LD. AND OTHERS, 97 L. T. 196; 23 T. L. R. 631; 24 R. P. C. 638—Warrington, J.

Affirmed, 98 L. T. 258; 24 T. L. R. 192; 25 R. P. C. 149—C. A.

3. *Ex-Employé—Statement that Trader Came "from" a Firm.*—A person who had for fifteen years been in the employment of a West-end firm of tailors in London as a journeyman sewer left the firm and went into partnership with a tailor at a seaside town. The latter firm stated on the outside of their shop, and on their cards, invoices, and letter paper, that the partner in question came "from" the London firm, and they issued a circular stating that he came with a reputation of fifteen years' successful experience with the London firm, and was therefore in a position to advise clients in the very latest styles and fit in fashionable and smart clothing. Upon an application by the London firm for an injunction:—

**Trade Name—Continued.**

**HELD**—that the London firm were not, in the circumstances, entitled to an injunction to restrain the use of their name as above.

**CUNDY v. LERWELL AND PIKE**, 99 L. T. 273 ; 24 [T. L. R. 584—Parker, J.]

**II. TRADE CUSTOMS.**

[No paragraphs in this vol. of the Digest.]

**III. TRADE COMBINATION.**

[No paragraphs in this vol. of the Digest.]

**IV. RESTRAINT OF TRADE.**

*See also* **CONTRACT**, No 8a.

**4. Covenant in Restraint of Trade—Agreement Not to "Be Concerned or Interested in" a Similar Business—Employment as Paid Servant—Construction.**—In construing a covenant in restraint of trade the circumstances and the business meaning of the words used must be regarded, and where the covenantor, the manager of the business sold, covenanted not to "be concerned or interested" in a similar business:—

**HELD**—a breach of such covenant to become the manager of a rival business in the same street.

**CAVENDISH v. TARRY**, 52 Sol. Jo. 726—Eve, J.

**5. Reasonableness—Newspaper Reporter—Infant—Benefit of Infant.**—A person under the age of twenty-one years entered into the service of the proprietors of a newspaper in a town, where a rival newspaper was established, as a junior reporter at a salary of £2 a week. When he entered the service he signed an agreement that he would not, after leaving the service, be connected as proprietor, employé, or otherwise with any newspaper business carried on in the town or within a radius of twenty miles.

**HELD**—that the agreement was unreasonable and invalid.

Decision of Eve, J. (24 T. L. R. 853 ; 52 Sol. Jo. 714) reversed.

**SIR W. C. LENG & CO. (SHEFFIELD TELEGRAPH), LD. v. ANDREWS**, 25 T. L. R. 93—C. A.

**6. Wrongful Dismissal—Right of Servant to Totally Repudiate Contract, including Covenant in Restraint of Trade.**—Where a servant is wrongfully dismissed without his service being terminated by giving the agreed notice, he may treat the contract as entirely at an end, whilst retaining his right to sue his master for wrongful dismissal, and may ignore a covenant in the contract restraining him from trading on the termination of his engagement.

**GENERAL BILL-POSTING CO., LD. v. ATKINSON**, [1908] 1 Ch. 537 ; 77 L. J. Ch. 411 ; 98 L. T. 482 ; 24 T. L. R. 285 ; 52 Sol. Jo. 240—C. A. Affirmed, 25 T. L. R. 178—H. L.

**V. TRADE UNIONS.****(a) Miscellaneous.**

**7. Action of Tort—Malicious Prosecution—Liability of Trade Union—Official Acting on Behalf of Union—Trade Disputes Act, 1906**

(6 Edw. 7, c. 47), s. 4.]—Sect. 4 of the Trade Disputes Act, 1906, is general in its application, and protects a trade union against any action of tort, and is not limited to a tortious act arising out of a trade dispute. Therefore, an action for malicious prosecution will not lie against a trade union.

An action will lie against a member or official of a trade union for a tort committed by him when acting on behalf of himself and all other members of the union, sect. 4 only preventing him from being so sued as to render the trade union as such and its funds liable for the tortious act.

**BUSSY v. THE AMALGAMATED SOCIETY OF [RAILWAY SERVANTS AND BELLS]**, 24 T. L. R. 437—Darling, J.

**8. Action against Trade Union—Libel—Not "in Contemplation or in Furtherance of a Trade Dispute"—Trade Disputes Act, 1906** (6 Edw. 7, c. 47), s. 4.]—The immunity which the legislature has given to trade unions does not extend to tortious acts not committed in furtherance or in contemplation of a trade dispute. Where there is no evidence of any such trade dispute, an action for tort, such as an action for a libel in a newspaper published by a trade union, will lie against the trade union as such.

**RICKARDS v. BARTRAM AND OTHERS**, [Times, December 18th, 1908—Darling, J.]

**9. Action against Trade Union or its Officials—Jurisdiction—Judicial Proceeding—Trade Disputes Act, 1906** (6 Edw. 7, c. 47), s. 4.]—By the Trade Disputes Act, 1906, sect. 4, Courts of law are absolutely deprived of any jurisdiction to hear claims against a trade union for any tortious act done, in contemplation or furtherance of a trade dispute, by any members or officials thereof, on behalf of themselves and all other members of the trade union. Judgment cannot be entered, even for costs, if a trade union is sued for such a tortious act.

*Quære*, whether what a Court cannot entertain at all is a judicial proceeding so as to ground, for instance, a prosecution for perjury.

**GRAY v. ALLISON AND OTHERS**, [Times, December 15th, 1908—Darling, J.]

**10. Action of Tort—"Trade Dispute"—"In Contemplation of a Trade Dispute"—Non-payment of Fine to Union—Threat to Employer—Trade Disputes Act, 1906** (6 Edw. 7, c. 47), s. 3.]—The plaintiff, who had been a member of a trade union, was during his membership fined a sum of 10s., which he did not pay. He became an employer, and ceased to be a member of the union. Subsequently he ceased to be an employer and rejoined the union, the fine not having been paid. The defendant, who was a delegate of the union, went to the foreman of the plaintiff's employer and told him that he had better "stop Conway (the plaintiff), or there will be trouble with the men." The plaintiff was in consequence dismissed from his employment. In an action against the defendant to recover damages the jury found that there was not a trade dispute existing or contemplated by the men ; that the

**Trade Unions—Continued.**

defendant uttered a threat to the plaintiff's employer; that what he did prevented or was intended to prevent the plaintiff from getting or retaining employment; that it was done to compel the plaintiff to pay, and to punish him for not having paid the fine; that what the defendant did was not done only to warn the plaintiff's employer that the union men would leave in consequence of their being unwilling to work with the plaintiff, and that it was not done in consequence of the men objecting to work with him; and that the defendant did something more than act on behalf of the men employed by the plaintiff's employer.

HELD—that upon these findings the act of the defendant was done "in contemplation or furtherance of a trade dispute" within the meaning of sect. 3 of the Trade Disputes Act, 1906, and that the defendant was protected by that section.

Effect of sect. 3 of the Trade Disputes Act, 1906, discussed.

Decision of Div. Ct. (24 T. L. R. 604) reversed.

CONWAY v. WADE, [1908] 2 K. B. 844; 24 [T. L. R. 874; 52 Sol. Jo. 748—C. A.

11. "Peaceful Picketing."—The Trade Disputes Act, 1906, in legalising "peaceful picketing," confers no right to enter upon private property against the will of the owner.

LARKIN v. BELFAST HARBOUR COMMISSIONERS, [1908] 2 I. R. 214—K. B. D.

11a. *Trade Dispute—Agreement to Refer to Conciliation Committee—Bonâ fide Belief that Employer had Refused to Refer Dispute—Strike ordered by Branch of Trade Union—Ratification by Central Body—Knowledge of Contracts of Service Broken by Men Called Out.*—In this action, to which the Trade Disputes Act, 1906, was held not to apply (see col. 618, ante), the plaintiff alleged that the defendant trade union had with other defendants maliciously induced E. and F., two other defendants, to break their contracts of service with the plaintiff. A branch of the union had "called out" workmen of the plaintiff, including E. and F., and the central body had ratified the act of the branch. E. and F. were at the time under contracts of service for three and five years respectively. Lord Alverstone, C. J., who tried the case without a jury, found as facts, *inter alia*, that the trade union, when the men were called out, were unaware of the existence of E. and F.'s contracts, that the central body, when they ratified the strike, were aware of the existence of these contracts, and that the branch of the trade union acted in a *bonâ fide* belief that the plaintiff was trying to avoid having a dispute settled in accordance with a previous agreement to refer such disputes to a conciliation committee composed partly of employers and partly of members of the branch of the trade union.

HELD—that, although the branch officials of the trade union were not, as such, officers or agents of the central body, the central body was

not exonerated if they in fact ordered or authorised the branch officials to withdraw wrongfully the men from their employment.

*Denaby and Cadeby Main Collieries, Ltd. v. Yorkshire Miners' Association* ([1906] A. C. 384) distinguished.

HELD—that the judgment of Lord Collins in *Read v. Friendly Society of Operative Stonemasons* ([1902] 2 K. B. 732) did not recognise that in circumstances like those in the present case there might be justification for inducing persons to break their contracts; that the agreement to refer disputes did not give to the trade union, in case of a refusal to refer a dispute, an implied power to call out men whom they knew to be under contracts of service; that the knowledge of the men's section of the conciliation committee, who were in fact a committee of the branch of the defendant trade union, that E. and F. were under contracts of service was the knowledge of the branch; and that therefore the defendant trade union was liable.

Decision of Lord Alverstone, C. J., reversed.

SMITHIES v. NATIONAL ASSOCIATION OF OPERATIVE PLASTERERS AND OTHERS, *Times*, December 22nd, 1908—C. A.

**(b) Rules.**

11b. *Application of Funds—Representation in Parliament—Supporting Labour Party—Ultra vires—Registration of Rules of Society—Alteration of Rules—Conclusiveness of Registrar's Certificate—Trade Union Acts, 1871 (34 & 35 Vict. c. 31), s. 13; and 1876 (39 & 40 Vict. c. 22), s. 16.*—The certificate of the Registrar that an alteration in the rules of a trade union has been registered under the Acts is not conclusive as to the validity of such alteration.

It is not competent for a trade union to provide for the maintenance of Parliamentary representation by means of a compulsory levy on its members.

Per Fletcher Moulton, L. J.—By our Constitution, Parliamentary representatives are chosen by votes, and, however little the political views of an elected member may coincide with those of the minority in the constituency, they cannot complain. But that election is the election of a representative, and, whoever be chosen, the right of the minority remains, that he shall be a representative, and not one who has contractually fettered himself in discharge of the duty of a representation which he has accepted as regards the public and not only as regards his own supporters.

Per Farwell, L. J.—The primary duty of a member of Parliament is to his country, and he cannot bind himself at law by any promise in abrogation of that duty.

Decision of Neville, J. ([1908] 77 L. J. Ch. 759; 24 T. L. R. 827) reversed.

OSBORNE v. THE AMALGAMATED SOCIETY OF [RAILWAY SERVANTS, 25 T. L. R. 107; 53 Sol. Jo. 98; [1908] W. N. 251—C. A.



## Trade Unions—Continued.

12. *Trade Union—Defence to Action for Recovery of Fine—Definition—Restriction of Trade*—*Trade Union Act, 1871* (34 & 35 Vict. c. 31), s. 4—*Trade Union Act (1871) Amendment Act, 1876* (39 & 40 Vict. c. 22), s. 16.]—In the rules of the defendant society it was stated that the society was a trade union, and that one of its objects was to regulate the relations between employers and workmen. Rule 40, sect. 2, provided that "strike pay will only be paid in support of members endeavouring to secure an advance of wages or resisting a reduction of the same, resisting an increase of the hours of labour and, when desirable, endeavouring to secure a reduction of the same." Sect. 4 provided that in case of a strike members should be entitled to strike pay for six weeks, and continued: "If the strike continue, the strike committee shall be empowered to continue pay for a longer period if they, upon consideration, deem it necessary." No other rule attempted to regulate the relations between employers and workman.

The plaintiff sued the defendant for the amount of a fine which he said had been illegally imposed upon him, and the defence was raised that, the defendant society being a trade union, the action was not maintainable by reason of the *Trade Union Act, 1871*, sect. 4.

HELD—that although many of the objects of the society were unobjectionable, there was enough to show that a main object was to interfere with the free course of trade in such a way as to bring it within the definition of a "trade union," and accordingly that the defence must be upheld.

GOZNEY v. BRISTOL, WEST OF ENGLAND AND [SOUTH WALES OPERATIVES TRADE AND PROVIDENT SOCIETY, 99 L. T. 616; 24 T. L. R. 814—Div. Ct.

13. *Title to Sue—Secession of Branch—Resolution to Distribute Funds Amongst Members—Action to Restrain Misapplication of Funds*—*Trade Union Act, 1871* (34 & 35 Vict. c. 31), s. 4.]—An action by the trustees of a trade union to restrain the misapplication of the funds of a branch of the trade union by the trustees of the branch is maintainable, notwithstanding sect. 4 of the *Trade Union Act, 1871*.

The Court made a declaration that a resolution of a seceding branch of the trade union to distribute the funds of the branch among the members of the branch was *ultra vires* the rules of the trade union.

COPE v. CROSSINGHAM, [1908] 2 Ch. 624; 77 [L. J. Ch. 777; 99 L. T. 609; 24 T. L. R. 816; 52 Sol. Jo. 683—Eve, J.

## (c) Conspiracy.

[No paragraphs in this vol. of the Digest.]

## (d) Offences.

See CRIMINAL LAW, NO. 30; and NO. 11, *supra*.

TRADE MARKS AND  
DESIGNS.

COL.

- I. REGISTRATION.
  1. Application . . . . . 638
  2. Invented or Descriptive Name :  
    Secondary Meaning . . . . . 641
  3. Alteration and Rectification . . . . . 641  
[No paragraphs in this vol. of the Digest.]
- II. DECEPTION.
  1. By Use of Same Trade Name . . . . . 641
  2. By Colourable Imitation of Name 642  
[No paragraphs in this vol. of the Digest.]
  3. By Colourable Imitation of Label,  
    Design, or Get-up . . . . . 642
- III. CONDUCT FACILITATING DECEPTION . . . . . 643  
[No paragraphs in this vol. of the Digest.]
- IV. MISREPRESENTATIONS BY ADVERTISING, ETC. . . . . 643  
[No paragraphs in this vol. of the Digest.]
- V. FALSE TRADE DESCRIPTION: MERCANDISE MARKS ACT, 1887 . . . . . 643
- VI. PRACTICE.
  1. In General . . . . . 644  
[No paragraphs in this vol. of the Digest.]
  2. Costs . . . . . 644  
[No paragraphs in this vol. of the Digest.]
  3. Trifling Offences . . . . . 644
- VII. MISCELLANEOUS CASES . . . . . 644  
    Construction of Agreement; Estoppel;  
    "Marking before Sale"; "Original Design"; Jurisdiction; Construction of Injunction; Meaning of "Registered"; Fraudulent Intent.

## 1. REGISTRATION.

## (1) Application.

1. *Design—Registration as Trade Mark*—*Trade Marks Act, 1905* (5 Edw. 7, c. 15), ss. 3, 8, 9.]—The fact that a proposed trade mark is capable of being registered as a design is not a fatal objection to its registration as a trade mark.

IN RE UNITED STATES PLAYING CARD COMPANY'S APPLICATION, [1908] 1 Ch. 197; 77 L. J. Ch. 204; 98 L. T. 435; 24 T. L. R. 140—Eady, J.

2. *Fancy Word—Descriptive Name—Patented Article*—*Trade Marks Act, 1905* (5 Edw. 7, c. 15), ss. 3, 9, 35, 36.]—Per Buckley, L. J., the true meaning of sect. 36 of the *Trade Marks Act, 1905*, is that a trade mark registered under an earlier Act is not to be removed from the register on the ground that originally it was not properly registrable, if when removed it could properly be registered under the Act of 1905. In 1881 G. patented the "Cyclostyle" pen, and in 1884 the word "Cyclostyle" was registered under the Patents, Designs and Trade Marks Act, 1883, in respect of stationery and apparatus for producing facsimile

**Registration—Continued.**

copies of writings and designs, including the pen and its accessories. In 1895 the patent expired, and by that time the word had become well known to the public as the name of the patented article and its accessories. A rival firm now applied under sect. 35 of the Trade Marks Act, 1905, to expunge the word from the Register of Trade Marks.

**HELD**—that the word, being at the date of its registration the name of the pen, was not a fancy word not in common use within the meaning of sect. 64 (1) (c) of the Act of 1883.

**HELD ALSO**—that it was not an invented word, nor a word having no direct reference to the character or quality of the goods within the meaning of sect. 9 of the Act of 1905.

Where an article is made under a patent, the manufacturer cannot by registering the name claim a monopoly in the name after the patent has expired.

*In re Magnolia Metal Co.'s Trade Marks* ([1897] 2 Ch. 371; 66 L. J. Ch. 598; 76 L. T. 672—C. A.) followed.

Decision of Neville, J. ([1907] 2 Ch. 478; 76 L. J. Ch. 616; 24 R. P. C. 545) affirmed.

**IN RE GESTETNER'S TRADE MARK**, [1908] 1 Ch. 513; 77 L. J. Ch. 298; 98 L. T. 121; 25 R. P. C. 156—C. A.

**3. Natural Products—Fruits and Vegetables—Salesman on Commission—Proprietor of Trade Mark**—“*Selection, Certification, Dealing with, or Offering for Sale*”—*Trade Marks Act*, 1905 (5 Edw. 7, c. 15), s. 3.]—A trade mark may be registered in connection with fruits or vegetables, and a person who sells such articles on commission may be the proprietor of the trade mark. W., a fruit grower, sent fruit to the plaintiffs to sell on commission. The plaintiffs registered a trade mark and sold W.'s fruit in baskets bearing such mark. They placed special reliance upon W.'s skill and reputation. These baskets were sent to W. to be packed, and on one occasion some full baskets were left in the hands of the railway company, the plaintiffs refusing to accept delivery. The company employed the defendants to sell the contents, and the contents were accordingly sold in, or from, the marked baskets.

**HELD**—that the contents were the goods of the plaintiffs by virtue of selection, certification, dealing with, or offering for sale, within the meaning of sect. 3 of the Trade Marks Act, 1905; that their trade mark was valid, and had been infringed.

**MAJOR BROS. v. FRANKLIN AND SON**, [1908] 1 K. B. 712; 77 L. J. K. B. 601; 98 L. T. 925; 25 R. P. C. 406—Jelf, J.

**4. Same Class of Goods—Trade Marks Nearly Identical**—“*A. B. C.*”—*Disclaimer*—“*Matter Common to the Trade*”—*Claim to Monopoly—Discretion*—“*Calculated to Deceive*”—*Burden of Proof*—*Trade Marks Act*, 1905 (5 Edw. 7, c. 15), ss. 11, 15—*Trade Mark of Limited Company—Name or Signature—Advertisements—Companies Act*, 1862 (25 & 26 Vict. c. 89), s. 41.]—Where an application is made to register a

trade mark which contains matter common to the trade, the Court, in exercising the discretion conferred upon it by sect. 15 of the Trade Marks Act, 1905, ought not to require, as a condition of registration, that the applicant shall disclaim the exclusive right to that part of the mark, unless some good reason for doing so is established. The fact that the applicant in good faith claimed a monopoly is not a sufficient ground for imposing the condition.

A firm of tobacconists, Albert Baker & Co. (1898) Ld., who, or whose predecessors, had used the letters A. B. C. as a brand for cigarettes for 11 years, applied to register as a trade mark a label which showed within a double circular border the letters A. B. C.; and they claimed the exclusive right to the use of those letters for cigarettes. The Aërated Bread Company, Ld., had sold cigarettes marked A. B. C. for three or four years, and they applied to register as a trade mark a representation of their common seal, which bore on it the letters A. B. C. They claimed no exclusive right to the use of the letters. Each company opposed the other's application. Albert Baker & Co. failed to show that the letters A. B. C. exclusively indicated their goods, but the Court was satisfied that the concurrent user had in the past led to no confusion or mistake.

**HELD**—that Albert Baker & Co.'s trade mark should be registered without imposing the condition of disclaiming the right to the exclusive use of the letters under sect. 15, and that, the Aërated Bread Co. having discharged the burden imposed upon them by sect. 11 of proving that their mark was not calculated to deceive, their mark should be registered.

**HELD, FURTHER**—that Albert Baker & Co.'s mark was not an “advertisement” within sect. 41 of the Companies Act, 1862, requiring the appearance thereon of the company's full name; and that the Trade Marks Act, 1905, does not restrict the name or signature appearing in a trade mark to the name or signature of the applicant.

**IN RE ALBERT BAKER & CO., LD., AND IN RE THE AERATED BREAD CO., LD.**, [1908] 2 Ch. 86; 77 L. J. Ch. 473; 98 L. T. 721; 24 T. L. R. 467; 25 R. P. C. 513—Eve, J.

**5. “Shamrock”—“Calculated to Deceive”—Trade Marks Act**, 1905 (5 Edw. 7, c. 15), s. 11.]—A person who carried on business in London, under the firm name of “Shamrock & Co.,” as a printer and publisher of pictorial post-cards, applied for the registration of the device of a shamrock as his trade mark. The application was opposed by an association for the development of Irish industries on the ground that, if the shamrock was registered and used as a trade mark, it would be calculated to deceive purchasers into the belief that the applicant's goods were of Irish origin, when in fact they were not.

**HELD**—that the application must be refused; as the mark would, within sect. 11 of the Trade Marks Act, 1905, be “calculated to deceive.”

**IN RE MCGLENNON'S APPLICATION FOR REGISTRATION OF “SHAMROCK,”** 25 T. L. R. 23; 53 Sol. Jo. 14—Warrington, J.



**Registration—Continued.**

**6. Distinctive Mark**—“Oswego” Corn Flour—*Trade Marks Act, 1905* (5 Edw. 7, c. 15), s. 9, sub-s. 5.]—The proprietors of a well-known preparation of corn flour, which had for many years been known in this country as Oswego Prepared Corn or Oswego Corn Flour, applied under sect. 9, sub-s. 5, of the Trade Marks Act, 1905, for the registration of the word “Oswego” alone as their trade mark for corn flour or prepared corn for use as food in class 42. The evidence showed that their preparation had been upon the market for 60 years, and that the word “Oswego” in connection with corn flour denoted their preparation.

**HELD**—that “Oswego” was a “distinctive mark” in respect of corn flour within the meaning of sect. 9, sub-s. 5.

**RE NATIONAL STARCH CO.’S APPLICATION FOR [THE REGISTRATION OF A TRADE MARK, [1908] 2 Ch. 698; 25 T. L. R. 13; 53 Sol. Jo. —Warrington, J.**

**(2) Invented or Descriptive Name : Secondary Meaning.**

**7. No Direct Reference to Character or Quality of the Goods—Descriptive Name**—“Diabolo”—*Mark used in Connection with Goods—Trade Marks Act, 1905* (5 Edw. 7, c. 15), ss. 3, 9 (3) (4), 35, 36, 37.]—In 1905 P. revived an old game originally known as “le jeu au diable,” or “the devil on two sticks”; he registered the word “Diabolo” as the trade mark for the double-coned top used in playing such game.

**HELD**—that the word “Diabolo” as applied to a top was not registrable as a trade mark either as an invented word or as a word having no direct reference to the character or quality of the goods within the meaning of sect. 9, sub-sects. (3), (4), of the Trade Marks Act, 1905.

*Seem*, also, the word “Diabolo” was not at the date of registration used or intended to be used as a mark for the purpose of indicating that the goods to which it was applied were the goods of the person asking for registration, as required by sect. 3 of the Trade Marks Act, 1905.

**PHILIPPART v. WILLIAM WHITELEY, LD., [IN RE PHILIPPART’S TRADE MARK, [1908] 2 Ch. 274; 77 L. J. Ch. 650; 99 L. T. 291; 24 T. L. R. 707; 25 R. P. C. 565—Parker, J.**

**(3) Alteration and Rectification.**

[No paragraphs in this vol. of the Digest.]

**II. DECEPTION.****(1) By use of Same Trade Name.**

**8. Chartreuse—Passing off—French Law of Associations—Transfer of Business to Official Liquidator—Business in France—Business Outside France—English Trade Marks.**]—A liqueur, known as “Chartreuse,” had been manufactured at a distillery near the monastery of La Grande Chartreuse, in France, by monks of the Carthusian Order, according to a secret process, since 1850. In 1876 the monks registered, among

**Y. D.**

others, as a trade mark in England a label which bore the words “Liqueur fabriquée à la Grand Chartreuse,” and had on it the device of the order, in the name of Louis Garnier, then procurateur of the monastery. In 1903 the monks of the monastery were expelled from France, and the French Courts declared that their property, business, goodwill, and trade marks became vested in an official liquidator under the French Law of Associations of 1901. Some of the expelled monks went to Tarragona, in Spain, where, under an agreement with a Spanish company, the manufacture of their liqueur was carried on under their superintendence. The liquidator, by his agents, proceeded to make a similar liqueur to that of the monks at the distillery of the monastery and to sell it in England under the name “Chartreuse,” and on the faith of the French judgments the comptroller placed the name of the liquidator upon the register in respect of the above trade mark in lieu of that of Rey, then procurateur of the order. Upon action by the representative of the Carthusian Order and others to restrain the liquidator and his agents from using the word “Chartreuse” and passing off their liqueur as that of the plaintiffs, and upon motion for the rectification of the register:—

**HELD**—that the word “Chartreuse” had prior to the year 1903 acquired in the English liqueur market the secondary meaning of a liqueur made by the monks of La Grande Chartreuse; that the French judgments did not affect the goodwill or the trade marks of the business carried on by the monks outside France; that the defendants were passing off their liqueur as the old liqueur made by the monks; and that the plaintiffs were entitled to an injunction to restrain the defendants from using the word Chartreuse as the name of their liqueur and from passing off their liqueur as that made by the plaintiffs, and that the entry in the register must be struck out.

**REY v. LECOUTURIER, [1908] 2 Ch. 715; 98 [L. T. 197; 25 R. P. C. 265—C. A.**

**(2) By Colourable Imitation of Name.**

[No paragraphs in this vol. of the Digest.]

**(3) By Colourable Imitation of Label, Design, or Get-up.**

**9. “Stock Labels”—Probability of Deception is a Question for the Judge, but Evidence of Experts Admissible and Should be Considered.**]—The defendant sold brandy, not of the plaintiffs’ manufacture, in bottles bearing a label of the same size and shape, also printed in gold on a white ground, and surrounded by a garland of vine leaves and grapes closely resembling the plaintiffs’ label, but, instead of the name “James Hennessy & Co.” and the word “Cognac,” the defendant’s label had in the centre the words “Celebrated Old Brandy” without any maker’s name.

**HELD** by the Court of Appeal (Ireland), reversing the order of the Master of the Rolls (Ireland)—that although a Judge ought to decide for himself whether the label was likely to mislead, he should have considered the evidence of



**Deception—Continued.**

experts which had been given upon the question; that the defendant's label, though resembling in some respects that of the plaintiffs, was a "stock label" in common use in the trade on cheaper brandies for many years, and that the Court could not stop the use of stock labels or of all labels bordered with a wreath of vine leaves and grapes; and that the injunction granted must be dissolved.

The plaintiffs appealed.

**HELD**—that there was no such similarity between the two labels as was likely to deceive a purchaser, and that the Court of Appeal was therefore right in entering judgment for the defendant.

Decision of Irish C. A. ([1908] 1 I. R. 43; 25 R. P. C. 125) affirmed.

HENNESSY & Co. v. KEATING, 24 T. L. R. 534; [52 Sol. Jo. 455; 25 R. P. C. 361—H. L.]

**III. CONDUCT FACILITATING DECEPTION.**

[No paragraphs in this vol. of the Digest.]

**IV. MISREPRESENTATIONS BY ADVERTISEMENT, etc.**

[No paragraphs in this vol. of the Digest.]

**V. FALSE TRADE DESCRIPTION: MERCHANDISE MARKS ACT, 1887.**

**10. Exemption in Case of Description Applied in 1887 to Goods of a Particular Class—Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), ss. 2, 3, 11.**—Where cigars made in this country, but partly composed of Havana tobacco, are sold in boxes with Spanish names and pictures upon them similar to those containing Havana cigars made and grown in Cuba, they are not sold under a trade description lawfully and generally applied in 1887 to goods of a particular class to indicate the particular class within the meaning of sect. 18 of the Merchandise Marks Act, 1887, although such British cigars were sold in 1887 in boxes with similar, but not the same, names and pictures upon them.

On these facts, therefore, a conviction under sect. 2, sub-sect. 2, of the Merchandise Marks Act, 1887, for selling two boxes of cigars to which a false trade description was applied, was upheld, the Court holding that the exemption under sect. 18 of the Act had no application to the case, and, supporting the direction of the learned Judge who tried the case, to the effect that sect. 18 was intended to protect one particular trade description, which was like a trade mark, attached to a particular class of goods.

R. v. BUTCHER, 72 J. P. 454; 24 T. L. R. 797; [52 Sol. Jo. 716—C. C. A.]

**11. "Tarragona Port"—Blended Wine—Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2, sub-s. 2, s. 18.**—The respondents sold to the appellant for 1s. a bottle of wine labelled "Tarragona Port" . . . "blended with wine produced from finest foreign grapes" (the latter words being in small print). Tarragona port is made in Spain. Of the contents of the bottle

one-third was heavy Tarragona port unfit for drinking by itself and imported for the express purpose of blending. Two-thirds were wine made from "grape must." Grape must is made in Greece. It is concentrated by the evaporation of about three-fourths of the natural water contained in the grape juice. When concentrated it is exported under the control of the Greek Government, and imported by a limited liability company into England, where a Greek in their employment converts the "grape must" into wine by adding a ferment and water to an amount corresponding to the amount previously removed by evaporation. The wine so produced is a light wine, not of high quality.

The respondents were prosecuted for unlawfully selling goods to which a false trade description was applied contrary to sect. 2, sub-sect. 2, of the Merchandise Marks Act, 1887. The magistrate dismissed the information.

**HELD**—that it was impossible to say that the magistrate was bound to come to the conclusion that the label was a false trade description within the meaning of the sub-section.

HOOPER v. RIDDLE & Co., 70 J. P. 417; 95 L. T. [424; 21 Cox, C. C. 277—Div. Ct.]

**VI. PRACTICE.****1. In General.**

[No paragraphs in this vol. of the Digest.]

**2. Costs.**

[No paragraphs in this vol. of the Digest.]

**3. Trifling Offences.**

**12. Isolated Act of Shop Assistant—Honest Tradesman—Injunction—Costs.**—The plaintiffs had a registered trade mark for B. films. They sent J. K. to the defendant's shop with a written order for one B. film, priced at 7d. The defendant's assistant, not being able to find the B. film required, showed J. K. another film, saying, "Will that do?" and receiving no answer, he wrapped it up, handed it to J. K., and took the 7d., saying, "That is right." The defendant had no pecuniary interest in selling the other film in preference to the B. film.

**HELD**—that although the defendant had not discharged the burden of making J. K. understand that he was receiving something different from that which he was sent to obtain, yet this was an isolated act of a zealous assistant of the defendant, an honest tradesman, and to grant an injunction would be an undeserved penalty.

**HELD FURTHER**—that as the defendant, instead of at once admitting a mistake, had joined issue with the plaintiffs' statement that, on their application for B. films, films of another manufacturer had been supplied, and as the plaintiffs had not proved intention to pass off other goods for the plaintiffs' goods, there should be no order as to costs or otherwise.

KODAK, LD. v. GRENVILLE, 124 L. T. Jo. 458— [Eve, J.]

**VII. MISCELLANEOUS CASES.**

**13. Trade Mark—Assignment of Trade Mark—Breach of Trade Mark—Title to Damages.**—

**Miscellaneous Cases—Continued.**

The plaintiffs sued for infringement of trade marks in respect of watches. Upon it being shown that the business of selling watches in Hong Kong effected thereby did not belong to the plaintiffs and was not carried on for their benefit, but that they merely manufactured and supplied to it the watches sold:—

HELD—that the plaintiffs could not maintain the action.

ULLMANN & CO. v. CESAR LEUBA, [1908] A. C. 443; 99 L. T. 531; 25 R. P. C. 673—P. C.

14. *Use of Royal Arms—Patents, Designs, and Trade Marks Act, 1883* (46 & 47 Vict. c. 57), s. 106.]—The defendants had been using the Royal arms on labels attached to their goods and on their notepaper. The plaintiffs claimed an injunction to restrain the defendants from using the Royal arms, and, in addition to their powers under the Act, had the authority of the Lord Chamberlain to institute the action, which was heard as a short cause on motion for judgment on agreed minutes.

The Court made an order for a perpetual injunction on the terms of the agreed minutes.

ROYAL WARRANT HOLDERS' ASSOCIATION v. [SLADE & CO., LD., *Times*, January 28th, 1908—Neville, J.

## TRAMWAYS AND LIGHT RAILWAYS.

	COL.
I. BYE-LAWS . . . . .	645
II. CONSTRUCTION AND MAINTENANCE	646
III. PURCHASE BY LOCAL AUTHORITY .	648
IV. MISCELLANEOUS . . . . .	649
[No paragraphs in this vol. of the Digest.]	
See also RATES AND RATING.	

**I. BYE-LAWS.**

1. *Bye-law as to Producing Ticket on Demand—Bona fide Loss of Ticket—Demand to Deliver up Ticket or Pay his Fare.*—A bye-law of a tramway company provided: "Each passenger shall show his ticket if and when required to do so to the conductor or any duly authorised servant of the company and shall also when required to do so either deliver up his ticket or pay the fare legally demandable for the distance travelled by such passenger." The respondent, on entering the car, paid his fare and received a ticket. In the course of the journey he lost it. On being asked to produce his ticket by the inspector he was unable to do so, though the conductor admitted he had paid for and received one. The respondent was then asked to produce his ticket, or pay the fare or leave the car, but failed to comply with any of these requests. He was summoned for a breach of the bye-law.

HELD—that the bye-law was reasonable, and the respondent had infringed it.

HUNT v. GREEN, 71 J. P. 18; 96 L. T. 23; 23 [T. L. R. 19; 5 L. G. R. 67; 21 Cox, C. C. 333—Div. Ct.]

2. *Excess Fare—Passenger Travelling too Far—Refusal to Pay Fare—No Intention to Defraud.*—The appellant was summoned for unlawfully refusing to pay the fare legally demandable for his journey on a light railway. The appellant, accompanied by his nephew, took two tickets to N. H., the fare being 5d., and requested the conductor to set him down at the Queen's Hotel, which is a place where cars stop on request. The conductor forgot to stop and the appellant was carried 200 or 250 yards past his destination. The appellant did not leave the car, and on being spoken to said he was going to remain on the car as a protest, and afterwards that he was going to the office of the company to lodge a complaint. He refused to pay the extra fare after passing N. H. or to give his name and address, which he said he would only give to the manager. An inspector accompanied the appellant to the office, where he gave his name and address and lodged his complaint. He was summoned for refusing to pay the excess fare under a bye-law which provided that "Each passenger shall upon demand pay to the conductor or other duly authorised officer of the company the fare legally demandable for the journey."

HELD—that the bye-law was good, and that the appellant could be convicted, though there was no intention to defraud.

TUFFLEY v. TATE, 71 J. P. 21; 96 L. T. 24; 5 [L. G. R. 448; 21 Cox, C. C. 337—Div. Ct.]

**II. CONSTRUCTION AND MAINTENANCE.**

3. *Electrical Working—Overhead Trolley System—Tramway Crossing Bridge over Railway—Power to Alter Position of Telegraph Wires of Railway Company—Tramways Act, 1870* (33 & 34 Vict. c. 78), s. 30.]—A special Act authorised the promoters of a tramway undertaking to construct a tramway crossing certain bridges over a railway. The special Act authorised the working of the tramway by electricity by means of overhead wires. The Board of Trade regulations provided that the overhead wire should be twenty-one feet above the surface of the road and that there should be a protecting wire two feet above that wire where it crossed the bridges.

At each of the bridges telegraph and other wires belonging to the railway company crossed the road at a height of less than twenty-one feet. Such wires were supported by posts erected upon embankments belonging to the railway company.

HELD—that sect. 30 of the Tramways Act, 1870, empowered the promoters of the tramway undertaking to alter the position of the railway company's wires so as to enable them to construct the tramway in accordance with the Board of Trade regulations, and for that purpose to enter upon the land of the railway company.

IN RE RHONDDA URBAN DISTRICT COUNCIL AND [TAFF VALE RY. CO., 72 J. P. 45; 97 L. T. 892; 24 T. L. R. 168, 213; 6 L. G. R. 131—Bray J. and C. A.]

4. *Repair of Junction between Paving Laid and Maintained by Tramways Company and Surface Laid and Maintained by Local Authority*



**Construction and Maintenance—Continued.**

—*Liability of Company*—"Junction," *Meaning of—Norwich Electric Tramways Act, 1897* (60 & 61 Vict. c. cclv.), s. 57, sub-s. 5.]—Sect. 57 of the Norwich Electric Tramways Act, 1897, provided that, "If the company fail to maintain and keep in good condition to the satisfaction of the corporation . . . (5) the junction of the paving laid and maintained by the company with the surface laid and maintained by the corporation, the corporation may if they think fit themselves at any time after seven days' notice to the company do the work necessary for the repair and maintenance of the road and the expense reasonably incurred by the corporation in so doing shall be repaid to them by the company with the addition of five per centum on such expense."

The surface laid and maintained by the corporation became worn down below the level of the paving laid and maintained by the company so as to form a ridge inconvenient to the use of the road by the public. Such wearing down arose at distances varying from 2 inches to 6 inches from the paving, so that the reasonable repair involved the taking up of the roadway in certain cases to a distance of 18 inches from the paving. The corporation executed the repairs and claimed the expenses of so doing from the company.

HELD—that such expenses were incurred in maintaining and keeping in good condition the junction of the paving laid and maintained by the company with the surface laid and maintained by the corporation, and were therefore recoverable under sect. 57.

Decision of Bray, J. (72 J. P. 50; 97 L. T. 911; 6 L. G. R. 101) affirmed.

IN RE NORWICH CORPORATION AND NORWICH [ELECTRIC TRAMWAYS CO., LD., 72 J. P. 178; 99 L. T. 133; 6 L. G. R. 1033—C. A.

5. *Snow, Clearing Away—Duty of Company*—"Maintain and Keep in Good Condition and Repair"—*Removal of Snow—Tramways Act, 1870* (33 & 34 Vict. c. 78), s. 28.]—Sect. 28 of the Tramways Act, 1870, does not impose upon a tramway company the duty of removing snow from their tramway, when it does not cause an obstruction to passengers.

HELD ALSO, upon the facts, that the defendant company had not by their use of a snow-plough created a nuisance causing peculiar damage to the plaintiff authority.

ACTON URBAN DISTRICT COUNCIL v. LONDON [UNITED TRAMWAYS, LD., 53 Sol. Jo. 62; [1908] W. N. 216—Div. Ct.

6. *Wood Paving—Use of Creosoted Wood—Nuisance—Damage to Plants—Statutory Obligation to Use Wood for Paving—Liability for Damage—Tramways Act, 1870* (33 & 34 Vict. c. 78), ss. 25, 28, 30 (4).]—A tramway company's special Act provided that the company should pave a certain road with wood. The company paved the road with soft wood impregnated with creosote. There was another kind of wood paving consisting of blocks

of hard wood, but the company considered the creosoted wood more suitable to the locality. Dust and fumes from the creosoted wood caused damage to the plants in a market garden which adjoined the road.

HELD—that the laying of creosoted wood blocks was a non-natural user of the land, and that the company were liable for the damage caused thereby to the market garden.

HELD FURTHER—that as there were two kinds of wood paving and the company had laid that kind which caused damage, they were not protected by their special Act, although at the time they did not know that creosoted wood would cause injury.

Decision of Div. Ct. (72 J. P. 145; 24 T. L. R. 299; 52 Sol. Jo. 264) affirmed.

WEST v. BRISTOL TRAMWAYS CO., LD., [1908] [2 K. B. 14; 77 L. J. K. B. 684; 72 J. P. 243; 99 L. T. 264; 24 T. L. R. 478; 52 Sol. Jo. 393; 6 L. G. R. 609—C. A.

**III. PURCHASE BY LOCAL AUTHORITY.**

7. *Lands, Buildings, etc., "Suitable to and used for the Purposes of" the Undertaking—Authorised Tramway Running Over Private Land into Car Factory—Car Factory not Suitable to and Used for Purposes of Undertaking—Obligation to Purchase Tramway within Factory and Land on which Laid.*]—Tramway No. 13 of the North Metropolitan Tramways Company, within the district of the Leyton Urban District Council, authorised by the North Metropolitan Tramways Act, 1870, passed for some distance over private land, and for at least 62 feet penetrated within the entrance gates of a large car factory erected on their land by the company, and for at least 4 feet 8 inches under the roof and within the walls of the car factory. On the purchase by the council from the company of this and other tramways, and "all lands, buildings, works, materials and plant of the company suitable to and used by them for the purposes of their undertaking within such district" (that of the local authority) under sect. 31 of the said Act, which is very similar in its terms to sect. 43 of the Tramways Act, 1870, an arbitrator found that the car factory was not suitable to and used by the company for the purposes of their undertaking within the district, and he awarded and determined the value of the portion of the permanent way of tramway No. 13, which was upon the private land, including the entrance gates, but not including the value of any buildings, to be the sum of £125.

HELD, per Alverstone, L. C. J., and Barnes, Pres.—that the arbitrator having found that the car factory was not suitable to and used for the purposes of the company's undertaking within the district, the fact that the authorised tramway which was being purchased extended for 62 feet within the gates of such factory did not render the council liable to purchase either the factory or the land on which such 62 feet of tramway was laid.



**Purchase by Local Authority—Continued.**

*Quære*, whether the council were liable to pay for the permanent way of such 62 feet of tramway.

Per Farwell, L. J., that the notice to purchase the tramway only extended to the tramway up to the boundary of the car factory, and that the part of the tramway within the boundary was included in that part of the notice to purchase which referred to "lands, buildings . . . suitable to and used for the purposes of the undertaking within the district . . ."; and that, therefore, as the arbitrator had found that the council were not bound to purchase the car factory, they were not bound to purchase the 62 feet of tramway within it.

Decision of Div. Ct. (71 J. P. 536; 98 L. T. 136; 6 L. G. R. I) affirmed.

NORTH METROPOLITAN TRAMWAYS CO., LD. v. [LEYTON URBAN DISTRICT COUNCIL, 72 J. P. 241; 98 L. T. 792; 6 L. G. R. 627—C. A.]

**IV. MISCELLANEOUS.**

[No paragraphs in this vol. of the Digest.]

**TRANSVAAL COLONY.**

*See* DEPENDENCIES AND COLONIES.

**TREASON.**

*See* CRIMINAL LAW AND PROCEDURE.

**TREASURE TROVE.**

*See* CROWN PRACTICE.

**TRESPASS.**

*And see* GAME; HIGHWAYS, No. 11.

1. *False Imprisonment—Authority of Agent—Ratification—Evidence to go to the Jury.*—The plaintiff sought to recover damages for alleged false imprisonment. The defence was that the act complained of was not done with the authority of the defendants. The plaintiff had agreed with an agent of the defendants to buy an encyclopædia by monthly instalments. Eventually a county court judgment was signed against the plaintiff for the balance due of unpaid instalments. Subsequently N. claimed from the plaintiff the return of the volumes already delivered, which the latter refused without a receipt in full discharge of his liabilities to the defendants. N. had the plaintiff taken to the police station and there charged him with unlawful possession of the books. The defendants wrote to the plaintiff's solicitors denying

the arrest, but declaring that the step taken had been rendered expedient by the plaintiff's refusal to give up the goods.

**HELD**—that there was evidence to go to a jury both on the question of implied authority and on the question of ratification.

KENNY v. GRESHAM PUBLISHING Co., *Times*, [February 28th, 1908—C. A.]

2. *False Imprisonment—Malicious Prosecution—Power of Arrest—Private Person—Special Constable—Railway Company Acting by Special Constable—Metropolitan District Railway Act, 1900 (63 & 64 Vict. c. cclxxiii.).*—A county court judge nonsuited the plaintiffs in an action for false imprisonment and malicious prosecution. It appeared that they were arrested by a special constable appointed under sect. 55 of the Metropolitan District Railway Act, 1900, on a charge of stealing metal from the Metropolitan District Railway Company. They were prosecuted by the railway company, and acquitted. In the county court the plaintiffs put in the depositions at the conclusion of their case, and in these there was evidence that metal similar to that owned by the railway company was found in the prisoners' possession. But there was no admission by their counsel that "a felony had been committed" nor any finding to that effect, as the case never went to the jury. The plaintiffs appealed against the decision of nonsuit.

Ridley and Darling, JJ., agreed that on the facts there was no evidence of the absence of reasonable and probable cause to suppose that the plaintiffs had committed a felony; but they differed on the question of whether it was proved that a felony had been in fact committed by some person.

Darling, J., was of opinion that as there was no finding or admission that a felony had been in fact committed, and as in his opinion the provision in sect. 55 (2) of the Act did not protect the special constable, as the power to "follow and arrest any person who has departed from any of the said railway stations or works" was limited by the subsequent words "after committing therein or thereon any offence for which he might have been arrested while within or upon the said railway stations or works," the special constable, on the evidence of the plaintiffs, was not protected if no felony had in fact been committed, and the case ought not to have been withdrawn from the jury.

*Quære* whether, if the special constable were protected, his protection would extend to the railway company.

Ridley, J., held that the decision of the county court judge was right, as all the evidence was to the effect that a felony had in fact been committed, and that therefore the special constable, even in his capacity as a private person and apart from the Act, was protected. He differed also as to the effect of the Act. Accordingly the appeal was dismissed.

KING v. METROPOLITAN DISTRICT RY. CO., 72 [J. P. 295; 99 L. T. 278—Div. Ct.]

**TRIAL.**

See CRIMINAL LAW AND PROCEDURE;  
PRACTICE AND PROCEDURE.

**TRINIDAD.**

See DEPENDENCIES AND COLONIES.

**TROVER AND CONVERSION.**

See MAGISTRATES, No. 19.

**TRUCK ACTS.**

See MASTER AND SERVANT; WORK AND  
LABOUR.

**TRUSTS AND TRUSTEES.**

	COL.
I. IN GENERAL . . . . .	651
II. ACCOUNTS . . . . .	653
[No paragraphs in this vol. of the Digest.]	
III. APPOINTMENT OF TRUSTEES . . . . .	653
IV. BREACH OF TRUST . . . . .	655
V. CONSTRUCTIVE TRUST . . . . .	656
[No paragraphs in this vol. of the Digest.]	
VI. DISTRIBUTION . . . . .	656
[No paragraphs in this vol. of the Digest.]	
VII. INVESTMENTS . . . . .	656
VIII. PRACTICE . . . . .	657
IX. RESULTING TRUST . . . . .	657
[No paragraphs in this vol. of the Digest.]	
X. TRUSTS FOR SALE, ETC. . . . .	657
[No paragraphs in this vol. of the Digest.]	

See also BANKRUPTCY; CHARITIES;  
COMPANIES; EXECUTORS; INSURANCE, No. 4; LIMITATION OF  
ACTIONS; MORTGAGES; PRACTICE  
AND PROCEDURE; POWERS; SALE  
OF LAND; SETTLEMENTS; WILLS.

**I. IN GENERAL.**

1. *Contribution—Improvements in Property—Trust for Sale—Reservation of Part of Proceeds of Sale—Rule Against Perpetuities.*—A reservation of part of the proceeds of sale of land to arise under a trust for sale, where the exercise of the trust is not limited to any certain period, is not void as infringing the rule against perpetuities, although the amount of the part reserved cannot be ascertained until the sale takes place.

There is no right, apart from express con-

tractual right, to require contribution towards the costs of permanent improvements in property effected by some of the part owners from the other part owners, where the action is not one for partition, and where the entire fund is not being dealt with.

In March, 1853, J. C., being owner of buildings subject to mortgages, executed a deed declaring that he held the property upon trust for sale, and for division, after certain payments, of the surplus proceeds into three equal parts, of which he should retain one, and should pay the other two to other persons. In August, 1853, J. C. assigned his one-third share to a purchaser, reserving to himself, in the event of the sale moneys exceeding £65,000, one-tenth of the difference between the actual amount of the one-third share and the amount it would have been if the sale moneys had been £65,000 only. The property was sold in 1898 by the then trustees of the deed of March, 1853, for much more than £65,000, and £4,500 was set aside by them to answer the claim of the representative of J. C., who had died. It was alleged by the parties interested, other than the representative of J. C., that the persons for the time being entitled to the rents and profits of the buildings had before the sale spent large sums in lasting improvements thereof, and they claimed that certain India stock, then representing the sum of £4,500, should contribute a proportionate part of the expenditure on these improvements. The trustees brought an action asking for a declaration of the Court upon the validity of the reservation and of the claim for contribution.

**HELD**—first, that the reservation did not infringe the rule against perpetuities, and was valid; and, secondly, that the Court could not direct the trustees to pay any part of the expenditure on the alleged improvements out of the India stock, as there was nothing in the deed of August, 1853, providing for this, and as the Court was not exercising its jurisdiction in partition nor dealing with the entire fund.

**RE COULSON'S TRUSTS, PRICHARD v. COULSON,**  
[97 L. T. 754—Warrington, J.]

2. *Discretion of Trustees—Life Tenant to Receive Whole or Portion of Annual Income according to Trustees' Absolute Discretion—Rights of Assignee of Beneficiary.*—A testator directed his trustees to set aside £5,000 and to pay to his brother for life "either the whole or only a portion of the annual revenue thereof, and that subject to such conditions and restrictions as my trustees in their sole and absolute discretion think fit."

During five years the trustees only paid to the brother £24, and he had assigned his interest under the will. The trustees' reason for paying so little was that the estate had been difficult to realise; that litigation with various legatees had resulted, and that less than £3,000 would be available to meet the £5,000.

The brother's assignee claimed to receive the full income of the sum available.

**HELD**—that the trustees had exercised their discretion as they were entitled to do (and, *semble*,

**In General—Continued.**

in a wise way), and that the assignee had no greater rights than the assignor.

Decision of Ct. of Sess. ((1907) S. C. 517) affirmed.

**TRAIN v. CLAPPERTON**, [1908] A. C. 342; [1908] [Sc. (H. L.) 26; 45 Sc. L. R. 682; 77 L. J. P. C. 124—H. L. (Sc.).

**3. Fund Raised by Subscription—Purse of Money for Servant—Power to Provide Pension out of Money—Right of Beneficiary to Claim Fund.**—The council of the Royal Botanic Society, upon the retirement of the plaintiff, who was an old servant of the society, sent a circular to the members stating that, as the society were unable to provide a pension, it was thought that a purse of money would be the most acceptable gift, and fellows and members of the society were invited to send donations to the secretary. A large sum of money was subscribed, and in view of that fact the council sent a circular to each of the subscribers suggesting that an annuity should be purchased for the plaintiff and his wife, and stating that unless they heard from the subscriber to the contrary they would assume that he approved of the proposal. A large majority of the subscribers did not reply, and the subscriptions of the dissenting subscribers were paid to the plaintiff. The plaintiff brought an action for an injunction to restrain the society from dealing or parting with the money except to the plaintiff, or as he might direct.

HELD—that under the first circular there was a trust of the fund subscribed for the benefit of the plaintiff, and he was entitled to have it paid over to him.

**PARKES v. ROYAL BOTANIC SOCIETY OF LONDON**, [24 T. L. R. 508—Eve, J.

**II. ACCOUNTS.**

[No paragraphs in this vol. of the Digest.]

**III. APPOINTMENT OF TRUSTEES.**

**4. Appointment by Will—Appointment by Reference—“Persons who are Trustees of R.’s Will”—Executors of Last Surviving Trustee of R.’s Will.**—W. by her will gave property to the persons who at the time of her death should be trustees of the will of R., her father. At the time of her death the original trustees of R.’s will and the trustees appointed in their place were dead, but the executors of the survivor had acted in the trusts.

HELD—that they were appointed trustees of W.’s will.

**Ockleston v. Heap** ((1847), 1 De G. & Sm. 640) has been overruled by **Hall v. May** ((1857), 3 K. & J. 585).

**IN RE WAIDANIS, RIVERS v. WAIDANIS**, [1908] [1 Ch. 123; 77 L. J. Ch. 12; 97 L. T. 707—Eady, J.

**5. Appointment of New Trustees—Executor of Last Surviving Trustee—Appointment by Executor Proving the Will—Other Executors not having**

**Proved not Joining—“Acting Executor”—“Personal Representatives”—Executor Dying without having taken Probate—Statute—Repeal—Will—“Implied Incorporation of Statute”—Lord Cranworth’s Act, 1860 (23 & 24 Vict. c. 145), s. 27—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 71—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10—Court of Probate Act, 1858 (21 & 22 Vict. c. 95), s. 16.]—A testator, by his will dated 1875, made provisions, in the event of a new trustee or trustees of his will being appointed, for the increase or reduction of the number of the trustees. He died in 1877. In 1894 one of three executors of his last surviving trustee appointed new trustees of the will; the executor appointing had proved, his co-executors were alive, but had not proved or renounced.**

HELD—that the effect of the words in the will and the saving clause of sect. 71 of the Conveyancing Act was to incorporate Lord Cranworth’s Act, 1860, in the will, and that the appointment, having been made by the acting executor, was good.

HELD FURTHER—that by virtue of sect. 16 of the Court of Probate Act, 1858, the two co-executors having died without taking probate, the representation to the testator had gone and devolved as if these persons had never been appointed executors.

**RE BOUCHERETT, BARNE v. ERSKINE**, [1908] [1 Ch. 180; 77 L. J. Ch. 205; 98 L. T. 32—Joyce, J.

**6. Two Trustees—One Retiring—Appointment of Public Trustee—Continuing Trustee Objecting—Wishes of Beneficiaries—Public Trustee Act, 1906 (6 Edw. 7, c. 55), s. 5, sub-s. 1.]—One of two trustees wished to retire, and he and the life tenants asked the continuing trustee to appoint the Public Trustee to act.**

The continuing trustee objected to appoint the Public Trustee, though he was quite willing to make some appointment. Upon a summons to compel him to appoint the Public Trustee he withdrew his objection and an order was made accordingly.

HELD—that as he had not been proved to have acted improperly he could not be ordered to pay his own costs of the summons.

**IN RE KENSIT**, [1908] W. N. 235—Neville, J.

**7. Power to Appoint New Trustees—Tenant for Life Donee of Power—Death of Last Surviving Trustee—His Executors acting as Trustees—Tenant for Life appointing New Trustees—Validity of Appointment—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 30 (1)—Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 10, 25.]—For three years after the death of a last surviving trustee his executors acted as trustees, taking possession of the settled property, collecting the rents, and accounting to the life tenant.**

The life tenant and her husband, who had power under the settlement to appoint new trustees, then appointed two new trustees by a deed containing the usual vesting declaration.

HELD—that the appointment was valid, and that the new trustees were entitled to have all



**Appointment of Trustees—Continued.**

the trust deeds and documents handed over to them.

IN RE ROUTLEDGE, *ROUTLEDGE v. SAUL*, [1908]  
[W. N. 256—Neville, J.]

**IV. BREACH OF TRUST.**

**8. Administration Action—Made Good after Writ—Common Form Judgment—Right to Re-open and Charge other Breaches of Trust—Removal of Trustees.**—In an administration action the Court can in its discretion remove trustees, although such removal is not asked for in the pleadings.

A plaintiff in such an action charged trustees with a breach of trust, which was admitted and made good, and thereupon the plaintiff consented to take a "common form administration judgment." At a later stage of the action he sought to charge other breaches of trust prior in date to the writ, and not alleged in the pleadings or proved at the trial.

HELD—that he could not be allowed to do so either for the purpose of obtaining relief against the trustees or in order to obtain their removal.

The rule that if a plaintiff alleges wilful default and proves one instance the Court will direct an account on the footing of wilful default does not apply to a case of breach of trust.

IN RE WRIGHTSON, *WRIGHTSON v. COOKE*,  
[1908] 1 Ch. 789; 77 L. J. Ch. 422; 98 L. T. 799—Warrington, J.

**8a. Misappropriation by Trustee's Solicitor—Statute of Limitations—Acknowledgment of Debt by Payment of Interest—Entries in Solicitor's Accounts with Trustee—Evidence—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8.**—Statements in books which are merely a record, kept by a person having pecuniary transactions with another person, of the state of account between them from time to time are not evidence against that other person unless it can be shown that such records have been in some way approved or adopted by him.

The fact that sums representing interest on trust money in the hands of the trustee's solicitor appear in the capital and income accounts of the solicitor with the trustee is not evidence of payment of interest and acknowledgment of the debt by the trustee so as to defeat a plea of the Statute of Limitations under the Trustee Act, 1888, sect. 8. Even if admissible, such accounts would prove no more than a payment by the solicitor of interest on a debt of the trustee himself.

RE FOUNTAINE, *RE DOWLER; FOUNTAINE v. BARON AMHERST OF HACKNEY AND OTHERS*,  
*Times*, December 9th, 1908—Warrington, J.

**9. Use of Trust Funds—Capital Replaced—Excess of Interest Obtained by Breach—Excess Paid to Life Tenant—Whether to be Regarded as Capital.**—A trustee, under a deed of settlement, took money out of Consols and used it to pay off his own bank debt, which bore interest at 5 per cent.; he was assumed to have paid to the

life tenant 5 per cent. interest. He subsequently restored the capital and invested it in authorised securities.

HELD—that the remaindermen could not require that the excess of interest over what would have been produced by Consols should be added to capital or accounted for.

*Stroud v. Gwyer* (1860) 28 Beav. 130; 2 L. T. 400 followed.

*Re Hill* (1870) 45 L. T. 126 distinguished.  
Decision of Kekewich, J. (97 L. T. 192) affirmed.

SLADE *v. CHAINE*, [1908] 1 Ch. 522; 77 L. J. Ch. 377; 98 L. T. 352; 52 Sol. Jo. 240—C. A.

**V. CONSTRUCTIVE TRUST.**

[No paragraphs in this vol. of the Digest.]

**VI. DISTRIBUTION.**

[No paragraphs in this vol. of the Digest.]

**VII. INVESTMENTS.**

See also POWERS, No. 10.

**10. Common Form Investment Clause—Retention of Securities in Specie.**—The common form of investment trusts in "Key and Elphinstone's Precedents" has the words "So long as the said trustees or trustee may think fit," referring to the retention of stocks, etc., in specie. These words are not to be found in "Davidson's Precedents," but the introduction of the words has merely made the meaning of the original precedent plain, viz., that the matter is to be one for the discretion of the trustees, subject to the consent of the tenant for life.

IN RE DENT'S SETTLEMENT TRUSTS, *PARKER v. DENT*, L. J. N. C., 127—Warrington, J.

**11. Mortgage—Unfinished Houses—"Two-thirds Rule"—Mortgage of Part of Property Valued—Valuer Chosen by Mortgagor—Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 8, 9—Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3.**—Lending trust money on unfinished houses is not in itself a breach of trust.

Trustees are not *prima facie* entitled to lend two-thirds of the value of the mortgaged property; the so-called "two-thirds rule" represents, not the standard of the normal risk which a prudent man may incur, but the standard of the minimum protection which he may require.

Where the property valued is greater than that actually comprised in the mortgage and the valuer is not employed independently of the mortgagor, trustees cannot rely on the valuation for the purposes of obtaining protection under the Trustee Act, 1893, sect. 8.

SHAW *v. CATES*, 126 L. T. Jo. 143—Parker, J.

**12. Scope of—"Expressly Forbidden"—Trustee Act, 1893 (56 & 57 Vict., c. 53), s. 1.**—A direction to trustees to keep trust funds and invest them in a particular way (e.g., on deposit at a named bank) does not "expressly forbid" investment of the funds in securities authorised by the Trustee Act, 1893.

IN RE BURKE, *BURKE v. BURKE*, [1908] 2 Ch. [248; 77 L. J. Ch. 597; 99 L. T. 86—Neville, J.]

**VIII. PRACTICE.**

**13. Contempt—Default in Payment of Money by Trustee—Judgment for Payment of that Sum—Less Sum Actually Received—Debtors Act, 1869 (32 & 33 Vict., c. 62), s. 4, sub-s. 3.]**—By the judgment in an action the defendant was ordered to pay a certain sum of money, which he admitted in his statement of defence he had received. The defendant, who had not appeared at the trial, did not pay the money, and the plaintiffs moved to attach him under sect. 4 (3) of the Debtors Act, 1869; upon the ground that there was "default by a trustee or person acting in a fiduciary capacity and ordered to pay by a Court of Equity any sum in his possession or under his control." Upon the hearing of the motion it was proved that the defendant was a trustee, or person acting in a fiduciary capacity, but the defendant proved that the sum which he had actually received was less than that which he had been ordered by the judgment in the action to pay.

**HELD**—that an order for attachment could not be made upon the admissions in the pleading.

**HARPER v. MCINTYRE**, 99 L. T. 191; 24 T. L. R. [738; 52 Sol. Jo. 533—Eve, J.]

**IX. RESULTING TRUST.**

[No paragraphs in this vol. of the Digest.]

**X. TRUSTS FOR SALE, etc.**

[No paragraphs in this vol. of the Digest.]

**ULTRA VIRES.**

*See* COMPANIES; LOCAL GOVERNMENT; PUBLIC AUTHORITIES; RAILWAYS.

**UMPIRES.**

*See* ARBITRATION.

**UNDUE INFLUENCE.**

*See* CONTRACT.

**UNINCORPORATE ASSOCIATIONS.**

*See* BUILDING SOCIETIES; FRIENDLY SOCIETIES; LOAN SOCIETIES; TRADE AND TRADE UNIONS.

**UNLAWFUL ASSEMBLIES.**

*See* CRIMINAL LAW AND PROCEDURE.

**UNSOUND FOOD.**

*See* FOOD AND DRUGS; PUBLIC HEALTH.

**USE AND OCCUPATION.**

*See* LANDLORD AND TENANT.

**USES AND TRUSTS.**

*See* REAL PROPERTY AND CHATELS REAL; TRUSTS AND TRUSTEES.

**USURY.**

*See* MONEY AND MONEY-LENDING.

**VACCINATION.**

*See* PUBLIC HEALTH.

**VAGRANCY.**

*See* CRIMINAL LAW; POOR LAW.

**VALUERS AND APPRAISERS.**

[No paragraphs in this vol. of the Digest.]

**VENDOR AND PURCHASER.**

*See* SALE OF LAND.

**VETERINARY SURGEONS.**

*See* MEDICINE.

**VICTORIA.**

*See* DEPENDENCIES AND COLONIES.

## VOIDABLE ASSIGNMENTS, CONVEYANCES, AND SETTLEMENTS.

See BANKRUPTCY; FRAUDULENT CONVEYANCES.

## VOLUNTARY ASSOCIATIONS.

See CHARITIES; CLUBS.

## VOLUNTEERS.

See RATING; ROYAL FORCES.

## WAGES.

See MASTER AND SERVANT.

## WAIVER AND ACQUIESCENCE.

See LANDLORD AND TENANT; JUSTICES.

## WAREHOUSES AND WAREHOUSING.

See BAILMENT; RATES AND RATING.

## WARRANT.

See CRIMINAL LAW.

## WARRANTIES.

See AUCTIONS; FOOD AND DRUGS; SALE OF GOODS.

## WASTE.

See REAL PROPERTY; SETTLEMENTS; TRUSTS.

## WATERMAN.

See METROPOLIS; WATERS AND WATERCOURSES.

## WATERS AND WATERCOURSES.

I. IN GENERAL . . . . . COL. 660

### II. RIVERS.

(a) Ownership of Soil . . . . . 661  
[No paragraphs in this vol. of the Digest.]

(b) Pollution . . . . . 661  
(i.) *Manufacturing Refuse* . . . . . 661  
(ii.) *Sewage* . . . . . 662  
(iii.) *Procedure* . . . . . 662  
[No paragraphs in this vol. of the Digest.]

(c) Repairing Banks, etc. . . . . 662  
[No paragraphs in this vol. of the Digest.]

(d) Rights of Riparian Owners . . . . . 662  
[No paragraphs in this vol. of the Digest.]

(e) River Thames . . . . . 662

### III. SEASHORE.

(a) In General . . . . . 663  
[No paragraphs in this vol. of the Digest.]

(b) Rights over Foreshore . . . . . 663

And see EASEMENTS, No. 2; FISHERIES; HIGHWAYS; LOCAL GOVERNMENT (BYE-LAWS); RAILWAYS AND CANALS; SEWERS AND DRAINS; SHIPPING AND NAVIGATION.

### I. IN GENERAL.

1. *Navigable Non-tidal Lake—Right of Crown—Public User.*—The Crown is not, of common right, entitled to the soil or waters of an inland non-tidal lake.

No right can exist in the public to fish in the waters of such a lake.

O'NEILL *v.* JOHNSTON, [1908] 1 I. R. 358—  
[Ross, J.]

2. *Use of Supply Without Right or Permission—Pollution by Sewage—Cause of Action—Damages.*—Owing to an escape of sewage from a sewer vested in an urban district council, the supply of drinking water used by an adjacent hydropathic establishment became polluted, and an outbreak of typhoid fever occurred in the establishment. In an action by the proprietor against the council for damages for the pollution of the water supply, it appeared that the plaintiff had been taking water which belonged to the defendant council without any right or permission to do so, and without the council's knowledge; and further that the pollution took place on the council's land where the water was collected. The jury found that the pollution was due to negligence on the part of the defendant council and that there was no contributory negligence on the part of the plaintiff, and awarded damages to the plaintiff.

HELD—that the plaintiff had not established any breach of a duty on the part of the defendants and that his action failed.

Decision of Lawrance, J. (72 J. P. 101) reversed.

FERGUSON *v.* MALVERN URBAN DISTRICT COUNCIL, 72 J. P. 273—C. A.



## II. RIVERS.

## (a) Ownership of Soil.

[No paragraphs in this vol. of the Digest.]

## (b) Pollution.

## (i.) Manufacturing Refuse.

**3. Factory Effluent—Facilities for Carrying into Sewers**—"Sewers" Sufficient for the Requirements of the District—*Bacterial Purification Works—Rivers Pollution Prevention Act, 1876* (39 & 40 Vict. c. 75), s. 7.—By sect. 7 of the *Rivers Pollution Prevention Act, 1876*: "Every sanitary or other local authority having sewers under their control shall give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers; "Provided also, that no sanitary authority shall be required to give such facilities as, aforesaid where the sewers of such authority are only sufficient for the requirements of their district. . . ."

**HELD**—that the word "sewers" in this proviso means the sewerage system of the district, and not merely the pipes into which the sewage is received, and that where sewage is passed by sewers into bacterial purification works, and such works are only sufficient for the requirements of the district, the sanitary authority cannot be required to afford a manufacturer facilities under the section.

*Guthrie, Craig, Peter & Co. v. Magistrates of Brechin* (1888), 15 R. 385—Ct. of Sess.) not followed.

*Eastwood Brothers v. Honley Urban District Council* ([1901] 1 Ch. 645; 70 L. J. Ch. 313; 84 L. T. 169; 49 W. R. 308—C. A.) discussed.

Decision of Div. Ct. ([1908] 2 K. B. 349; 77 L. J. K. B. 721; 72 J. P. 298; 52 Sol. Jo. 482) reversed.

*BROOK, LD. v. MELTHAM URBAN DISTRICT COUNCIL*, [1908] 2 K. B. 780; 77 L. J. K. B. 1079; 72 J. P. 409; 24 T. L. R. 809; 6 L. G. R. 997—C. A.

**4. Manufacturing Refuse Sent into Sewer and thence into Stream—Liability of Manufacturer**—*Rivers Pollution Act, 1876* (39 & 40 Vict. c. 75), ss. 3, 4, 7, 10.—By sect. 4 of the *Rivers Pollution Prevention Act, 1876*, "Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any poisonous, noxious, or polluting liquid proceeding from any factory or manufacturing process shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act. . . ."

A person who sends polluting liquid proceeding from a factory or manufacturing process into a sewer, vested in the sanitary authority, through which it flows into a stream, commits an offence under the above section, at all events, if he does not prove that the sanitary authority has afforded him facilities for draining his factory into the sewer under sect. 7 of the Act.

*Semble*, even if he does prove that he has been

afforded such facilities by the sanitary authority, he also commits an offence under sect. 4.

*Kirkheaton Local Board v. Ainley, Sons & Co.* ([1892] 2 Q. B. 274; 61 L. J. Q. B. 812; 56 J. P. 374; 67 L. T. 209; 41 W. R. 99—C. A.) followed.

Decision of Div. Ct. (71 J. P. 516; 98 L. T. 47 5 L. G. R. 1246) affirmed.

**WEST RIDING OF YORKSHIRE RIVERS BOARD** [*v. BUTTERWORTH & Co.*, 72 J. P. 193; 98 L. T. 789; 6 L. G. R. 634—C. A.]

Affirmed, 25 T. L. R. 117; 53 Sol. Jo. 97—H. L.

## (ii.) Sewage.

**5. Sewage Works—Pollution of Stream—Test of Pollution—Public Health Act, 1875** (38 & 39 Vict. c. 55), s. 17.—A local sanitary authority discharged into a natural stream from their sewage farm an effluent which was not freed from all excrementitious or other foul or noxious matter. The stream itself was polluted before it reached the sewage farm, but the effluent at the points where it was discharged into the stream did deteriorate the purity and quality of the water of the stream, such as it was, at those points. Upon action by the Attorney-General to restrain the authority from so discharging their sewage in contravention of sect. 17 of the *Public Health Act, 1875*:—

**HELD**—that the actual purity and quality of the water of the stream must be ascertained, not as a whole, but at the particular points of discharge, and that it must be ascertained whether the effluent was such as to deteriorate it at those points; that the authority had therefore infringed the prohibition in sect. 17 against conveying sewage into a natural stream unless freed from noxious matter such as would deteriorate the quality and purity of the water in the stream; and that an injunction must be granted.

**ATTORNEY-GENERAL v. BIRMINGHAM, TAME [AND REA DRAINAGE BOARD]**, [1908] 2 Ch. 551; 77 L. J. Ch. 836; 72 J. P. 20; 98 L. T. 310; 24 T. L. R. 126—Kekewich, J.

## (iii.) Procedure.

[No paragraphs in this vol. of the Digest.]

## (c) Repairing Banks, etc.

[No paragraphs in this vol. of the Digest.]

## (d) Rights of Riparian Owners.

[No paragraphs in this vol. of the Digest.]

## (e) River Thames.

**6. Obstruction—Action for Damages—Tolls for Navigating River—Liability of Conservators**—*Thames Conservancy Act, 1894* (57 & 58 Vict. c. clxxxvii.), ss. 3, 83, 160, 161, 165.—By the *Thames Conservancy Act, 1894*, the bed and banks of the river Thames were vested in the Conservators, who were authorised to remove obstructions therein. There was a public right of navigation, and the Conservators were empowered to demand tolls for the use of locks and piers, and also tolls for vessels other than pleasure boats navigating the Thames, ascertained according to the capacity of the vessel to carry.

**Rivers—Continued.**

A passenger steamer plying on the Thames was injured by a pile projecting from the bed of the river. The owners of the steamer paid lock and pier tolls, but not navigation tolls. In an action to recover damages against the Conservators:—

**HELD**—that though the steamer did not carry cargo, yet, inasmuch as she was not a "pleasure boat" within the meaning of the Act, the Conservators were entitled to charge navigation tolls in respect of her, to be calculated according to her capacity to carry, and her owners had a right to expect that the Conservators would take reasonable care not to expose the steamer to danger from obstructions to the navigation.

**HELD**, however, on the facts, that the Conservators had taken such reasonable care, and were therefore not liable.

Decision of Kennedy, J. (95 L. T. 104; 22 T. L. R. 419; 11 Com. Cas. 130) affirmed.

**QUEENS OF THE RIVER STEAMSHIP CO. v. [CONSERVATORS OF THE RIVER THAMES AND EASTON GIBB & SON, 96 L. T. 901; 23 T. L. R. 478; 12 Com. Cas. 278; 10 Asp. M. C. 542—C. A.]**

**7. Piers—Rights of London County Council to Levy Tolls—Transfer of Piers—Greenwich Pier—Thames River Steamboat Service Act, 1904 (4 Edw. 7, c. cccii.), s. 15.]**—The London County Council have no statutory power to charge any tolls in respect of Greenwich or Woolwich Piers beyond those prescribed by sect. 15 of their Steamboat Service Act, 1904. They are not entitled to charge the tolls prescribed for Woolwich Pier by the private Acts of the Greenwich Pier Company, whose "rights and privileges" were transferred to the Council.

Any facilities provided by the Council beyond those which the Act of 1904 requires them to provide must be paid for by the persons at whose request the same are provided.

Decision of Bray, J. (96 L. T. 57; 10 Asp. M. C. 340) affirmed.

**LONDON COUNTY COUNCIL v. GENERAL STEAM [NAVIGATION CO., LD., 96 L. T. 57; 10 Asp. M. C. 340—Bray, J.; 97 L. T. 863—C. A.]**

**III. SEASHORE.****(a) In General.**

[No paragraphs in this vol. of the Digest.]

**(b) Rights over Foreshore.**

**8. Charter—Grant of Adjacent Land—Open and Continuous User—Presumption.]**—A charter of 1621 granted to the respondent's predecessors certain lands adjacent to the foreshore; it was not clear on the face of it whether the foreshore was included. The grantees built a quay on the foreshore, maintained it as of right, and took tolls for the use of it.

**HELD**—that such open and continuous user gave rise to the inference that the site of the quay was included in the original grant.

Decision of C. A. ([1905] 1 L. R. 509) affirmed.

**ATTORNEY-GENERAL FOR IRELAND v. VANDE-LEUR, [1907] A. C. 369; [1907] 1 I. R. 481; 76 L. J. P. C. 89; 97 L. T. 221—H. L.]**

**9. Property of Corporation—Right to Hold Meetings on—Alleged Dedication to Public.]**

The plaintiffs claimed (1) a declaration that the defendants were not entitled, without the consent of the plaintiffs, to hold meetings, deliver lectures or addresses, sing hymns, and (or) preach sermons on any part of the foreshore and seashore of which the plaintiffs were owners in fee in possession; and (2) an injunction to enforce the plaintiffs' right if it existed.

The plaintiff corporation was admittedly entitled to the foreshore and the beach between high water mark and the road bounding the parade on the sea front. The defendants were the secretary and another member of a body known as the Brighton Open Air Mission, which had for fifteen years held meetings on the particular spot on which they were holding them when the action was commenced.

Complaints had been made by occupiers of neighbouring houses that the meetings were an annoyance to them and an injury to their business custom, and the corporation, having failed to make arrangements to stop the inconvenience, now brought the action. The defendants claimed the right to do what they were doing on the ground that these meetings had been held from time immemorial, and that there must be presumed to have been a dedication of this spot to the public for the purpose.

**HELD**—that no such public right as was claimed could exist, and that the declaration asked for must be made, with an injunction restraining the defendants from acting contrary to the declaration, except by consent of the plaintiffs.

**De Morgan v. Metropolitan Board of Works ((1880), 5 Q. B. D. 155; 49 L. J. M. C. 51; 44 J. P. 296; 42 L. T. 238; 23 W. R. 489) followed.**

**BRIGHTON CORPORATION v. PACKHAM AND [ANOTHER, 72 J. P. 318; 24 T. L. R. 603; 6 L. G. R. 702—Warrington, J.]**

**10. Tidal and Navigable River—Ownership of Crown—Power of Crown to Grant Foreshore and Bed of Tidal Navigable River to Private Person—Public Right of Navigation and Fishing—Right to Shoot Wild Fowl—Custom—Prescription—"Birds of Warren."]**—Subject to the public rights in connection with fishing and navigation, the Crown's ownership of the foreshore and the bed of the sea for some distance below low water mark and of the foreshore and the bed of a tidal navigable river is a beneficial ownership capable of being granted to a subject. Such grant cannot indeed operate to extinguish or curtail the public right of navigation, or (if made since Magna Charta) that of fishing, and rights ancillary thereto. But there is no public right of wild fowling as against the Crown or a grantee from the Crown.

P., a wild fowler, was in the habit of going in a boat upon the river Severn, where it ran past the plaintiff's manor, being there a tidal and navigable river, and of shooting wild fowl in exercise of an alleged right, both from his boat and on the foreshore.

In an action by the plaintiff claiming a declaration that the boundary of his manor was



**Seashore—Continued.**

the centre of the deepest channel of the river, and an injunction restraining P. from trespassing, shooting, or doing any act or thing whereby he might unlawfully disturb the plaintiff's decoys:—

**HELD**—(1) that upon the documentary evidence the plaintiff was entitled to the declaration claimed.

(2) That on the evidence P. or his ancestors, whose heir he was, had acquired no prescriptive right of wild fowling on the spot.

(3) That on the evidence the inhabitants of the manor had not proved a customary right of wild fowling. Moreover, *semble*, a custom to shoot could not be good, seeing that the benefit is not a mere easement, but a right of taking a profit, and no right to take a profit can be claimed by custom (*Davies' Case*, (1688) 3 Mod. 246, and *Wickham v. Hawker*, (1840) 7 M. & W. 631). A wild duck is a "bird of warren," but even if it were not, the benefit claimed would still be a "profit."

(4) That there was not sufficient evidence to justify the Court in drawing any inference of a trust of reservation giving a right of wild fowling to all the inhabitants of the manor.

(5) That, with regard to the alleged common law right for all the King's subjects to shoot wild fowl on the foreshore and in the bed of tidal navigable rivers, any rights the public have are ancillary to the public rights of fishing and navigation (*Blundell v. Catterall*, (1821) 5 B. & A. 268, and *Brinckman v. Matley*, [1904] 2 Ch. 313; 73 L. J. Ch. 642; 68 J. P. 534; 91 L. T. 429—C. A.), and the right of navigation is analogous to a right of highway, and can only be used for these purposes for which it exists.

*Harrison v. Rutland (Duke of)* ([1893] 1 Q. B. 142; 62 L. J. Q. B. 117; 57 J. P. 278; 68 L. T. 35; 41 W. R. 322—C. A.) and *Hickman v. Massey* ([1900] 1 Q. B. 752; 69 L. J. Q. B. 511; 82 L. T. 321; 48 W. R. 385; 16 T. L. R. 274—C. A.) applied.

*FITZHARDINGE (LORD) v. PURCELL*, [1908] [2 Ch. 139; 77 L. J. Ch. 529; 72 J. P. 276; 99 L. T. 154; 24 T. L. R. 564—Parker, J.

**WATERWORKS.**

I. IN GENERAL . . . . .	COL. 666
II. CHARGES FOR WATER . . . . .	668
[No paragraphs in this vol. of the Digest.]	
III. COMPENSATION WATER . . . . .	668
[No paragraphs in this vol. of the Digest.]	
IV. DIVIDENDS . . . . .	668
[No paragraphs in this vol. of the Digest.]	
V. SUPPLY OF WATER . . . . .	668

See also COMPULSORY PURCHASE, No. 12;  
METROPOLIS, No. 15; MINES;  
PUBLIC HEALTH.

**I. IN GENERAL.**

1. *Communication Pipe Under Highway—Liability to Repair—Whether on Company or*

*Consumer—Pipe not the Property of the Consumer—Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), s. 17.]—A communication pipe connecting a main of a water company with the premises of a consumer lay under a highway. The company did not prove that such pipe was the property of the consumer.*

**HELD**—that the liability to repair such pipe was upon the company and not upon the consumer.

Decision of Div. Ct. (71 J. P. 173; 96 L. T. 395; 5 L. G. R. 260) affirmed.

The Divisional Court had held that the liability to repair was upon the company even if the pipe was proved to be the property of the latter; but the Court of Appeal declined to decide that question.

*COLNE VALLEY WATER CO. v. HALL*, 72 J. P. [25; 98 L. T. 398; 6 L. G. R. 115—C. A.

2. *Repair of Highway—Statutory Liability to Make Good, and to Maintain for a Year—Highway Broken Up—Subsidence—Not Made Good within Year of Liability—Accident to Wayfarer from Subsidence after Year of Liability—Action Against Water Authority—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 32.]—In June, 1907, the plaintiff slipped from a water-box in a highway from which the surrounding flags had subsided, and was injured. In an action for damages against the defendants, the water authority of the district, the county court judge found that the defendants, after breaking up the highway at this spot in October, 1904, in pursuance of their statutory powers, had (through their agents) put back the ground in such a way that there was a subsidence within their year of liability under sect. 32 of the Waterworks Clauses Act, 1847, and that such subsidence was not effectively made good within that year, which ended in October, 1905, or before the accident. He held that the defendants' breach of duty brought about the accident, and, notwithstanding the concurrent liability of the highway authority to repair the highway, gave judgment for the plaintiff for £40.*

The defendants had in point of fact agreed with the highway authority to do all necessary repairs on their behalf during their year of liability.

**HELD**—that there was evidence to support the findings of the county court judge, and that on these findings his decision was right.

*HARTLEY v. ROCHDALE CORPORATION*, [1908] [2 K. B. 594; 77 L. J. K. B. 884; 72 J. P. 343; 99 L. T. 275; 24 T. L. R. 625; 6 L. G. R. 858—Div. Ct.

3. *Reservoir—Support from Minerals Under Adjacent Land—Waterworks Clauses Act, 1847, (10 & 11 Vict. c. 17), ss. 18—27.]—In 1875 the M. corporation purchased, by agreement, under the powers of a special Waterworks Act of 1847, (1) an estate from S, who reserved to himself the minerals thereunder, with full powers to work the same without making compensation; (2) an adjoining estate from T., including the minerals. In 1875 the corporation obtained a further special Act, which incorporated the*



**In General—Continued.**

Waterworks Clauses Act, 1847, and under this special Act they constructed a reservoir partly on the S. land and partly on the T. land. By sect. 22 of the Waterworks Clauses Act, 1847, if the owner, lessee, or occupier of any mines lying under the reservoirs of the undertakers, or within forty yards therefrom, be desirous of working the same, he must give the undertakers notice in writing of his intention so to do thirty days before the commencement of working, and if it appear to the undertakers, after an inspection of the mines, that the working of the mines is likely to damage their works, and they be willing to pay compensation for the mines to the owner, lessee, or occupier thereof, then he shall not work the same; and by sect. 23, if before the expiration of the thirty days the undertakers do not state their willingness to pay compensation to such owner, lessee, or occupier, he may work the mines as if that Act and the special Act had not been passed. The appellants, who were lessees of the mines under the S. land, gave notice to the corporation of their intention to work the mines under and adjacent to the reservoir, but the corporation gave no counter-notice of their willingness to pay compensation for the mines, and accordingly the appellants worked the mines and caused a subsidence of the T. land. In an action to restrain the appellants from so working their mines as to damage the T. land:—

**HELD**—that the mining sections (18–27) of the Waterworks Clauses Act, 1847, did not deprive the corporation of their common law right to lateral support for the surface of the T. land, and that they were entitled to an injunction in respect of the appellants' workings both within and without the forty yards limit.

Decision of C. A. ([1906] 2 Ch. 564; 75 L. J. Ch. 772; 70 J. P. 409; 95 L. T. 277; 22 T. L. R. 808; 4 L. G. R. 1129) affirmed.

**NEW MOSS COLLIERY CO. v. MANCHESTER CORPORATION**, [1908] A. C. 117; 77 L. J. Ch. 392; 72 J. P. 169; 98 L. T. 467; 24 T. L. R. 386; 52 Sol. Jo. 334; 6 L. G. R. 809—H. L.

**4. Ultra vires—Authorised Works—Authorised Sources of Supply—Purchase of Additional Land by Agreement—Obtaining New Supply of Water—Work Unauthorised by Special Act.**—A water company was by a special Act of 1893 authorised to construct certain works according to deposited plans and sections, and given compulsory powers expiring in three years. The company in 1907 acquired by agreement under the powers of its Act three pieces of land several miles away, and proposed to sink wells and construct a pumping station there and connect this with their existing main and so with their existing reservoir.

**HELD** upon the true construction of the Act—that the company had no power to obtain water from any other source than that authorised by its special Act.

**ATTORNEY-GENERAL v. FRIMLEY AND FAEN-BOROUGH DISTRICT WATER CO.**, [1908] 1 Ch. 727; 77 L. J. Ch. 442; 72 J. P. 204; 98 L. T. 905; 24 T. L. R. 380, 473; 6 L. G. R. 689—Eady, J., and C. A.

**5. Ultra vires—Special Act—Purchase of Land by Agreement—Sinking Well—Erecting Pumping Station—Ancillary Works—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 1, 28–30, 35.**—A water company proposed to lay down a water main from a pumping station at H. under a public footpath passing on the west side of the plaintiffs' land. It was admitted that the footpath was not repairable by the inhabitants at large, but was under the control of the plaintiffs. The company was incorporated by an Act of 1878, by which they were empowered to purchase by agreement land, not exceeding five acres, for the purposes of their authorised undertaking, and by an Act of 1892 they were authorised to obtain a further supply and acquire additional land up to six acres for the purpose of their authorised undertaking. The scheme authorised by the Act of 1892 was abandoned, and the company acquired by agreement land at H. In 1906 the main portion of their water was supplied from H., and pumps capable of providing 15,000 and 10,000 gallons an hour were erected there. The pump at L., the only other source in use, could not provide more than 3,000 gallons an hour. It was said sect. 28 of the Waterworks Clauses Act, 1847, gave the company a general power which was not restricted to the authorised undertaking.

**HELD**—that the works at H. were not ancillary to the company's main undertaking and were new works unauthorised by statute.

**HELD ALSO**—that sect. 23 of the Waterworks Clauses Act, 1847, must be read in connection with sect. 1, and all that is given is authority to enable the company to carry out their authorised undertaking.

The plaintiffs, having established their title to the land, were entitled to an injunction to restrain the company from trespass without joining the Attorney-General.

**MARIOTT v. EAST GRINSTEAD GAS AND WATER CO.**, 72 J. P. 509; 25 T. L. R. 59; [1908] W. N. 227—Eady, J.

**II. CHARGES FOR WATER.**

[No paragraphs in this vol. of the Digest.]

**III. COMPENSATION WATER.**

[No paragraphs in this vol. of the Digest.]

**IV. DIVIDENDS.**

[No paragraphs in this vol. of the Digest.]

**V. SUPPLY OF WATER.**

**6. Domestic Purposes—Dwelling-house—Workhouse—Trade or Business Purposes for which Water is Required—Non-domestic Purposes—Separation of Supplies—Chester Waterworks Act, 1857 (20 & 21 Vict. c. xi), ss. 43, 44, 46, 47—Chester Waterworks Act, 1874 (37 & 38 Vict. c. lxxv.), s. 22—Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), s. 12.**—By the Chester Waterworks Act, 1857, s. 43, the water company were bound to supply water to dwelling-houses in their district for domestic purposes at certain rates based on the annual value of such dwelling-houses, and by sect. 47 they were bound to supply water for other than domestic purposes at such rate and upon such terms and conditions

**Supply of Water—Continued.**

as might be agreed upon, or, failing agreement, upon such terms as might be determined by two justices, provided that the supply for domestic purposes should not be in any way interfered with or endangered. By the Chester Waterworks Act, 1874, s. 22, "no person shall be entitled to require nor shall the company be bound to supply any dwelling-house with water (otherwise than by meter or special agreement) where any part of such dwelling-house is used for any trade or business for which water is required."

The Chester guardians maintained a workhouse where water was used for boilers used for purposes of power to engines for driving ventilating and drying fans, for wringer and washing machines, and to drive a donkey-engine for pumping rainwater; for watering pigs and washing piggeries, the pigs being kept primarily to consume refuse, but such pigs being also fed with meal and sold when fattened; for engines used to heat a shed where wood was chopped, such wood being sold; for watering vegetable and flower gardens and heating greenhouses; for heating infirmary, surgery, mortuary, and chapel; for flushing water-closets and for ordinary drinking, washing, and sanitary purposes for the inmates and others in the workhouse.

HELD—that the guardians did not use any part of the workhouse for any trade or business for which water was required, and that, therefore, sect. 22 of the Act of 1874 did not apply; that the guardians were entitled to a supply of water for domestic purposes at the domestic rate, and a separate supply for non-domestic purposes at a rate and upon the terms and conditions to be agreed upon or determined by two justices as provided by sect. 47 of the Act of 1857; but that the guardians were not entitled to require the company to supply the workhouse with water for purposes other than domestic purposes, unless and until they had agreed with the company as to the terms and conditions of such supply, or, failing agreement, the terms and conditions had been determined by two justices as provided for by sect. 47 of the Act of 1857, and they had made provision for the segregation of the two supplies.

Decision of Jelf, J. (71 J. P. 133; 96 L. T. 566; 23 T. L. R. 245; 5 L. G. R. 215) varied.

CHESTER WATERWORKS Co. v. CHESTER [UNION, 72 J. P. 121; 98 L. T. 701; 24 T. L. R. 301; 6 L. G. R. 446—C. A.

**7. Domestic Purposes — Dwelling-house — School — Purposes of Trade or Business.**—A waterworks company's special Act provided that the company should, at the request of occupiers of houses, furnish them with a supply of water for domestic purposes at specified rates, but that the company should not be compelled to supply water to any dwelling-house otherwise than by agreement where any part of such house was used for any trade, manufacture, or business for which water was required. The company supplied water to the plaintiff's house, which was used as a boarding school.

HELD—that the plaintiff was entitled to be supplied with water at the rate specified for the supply of water for domestic purposes.

FREDERICK v. BOGNOR WATER CO., 72 J. P. [501; 25 T. L. R. 31; 53 Sol. Jo. 31; [1908] W. N. 215—Eve, J.

**8. Domestic Purposes — Water used for Physician and Surgeon's Motor Car—Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), s. 12.**—Water supplied to a physician and surgeon and used by him for the purpose of washing a motor car, which he uses for the purposes of his profession, is not water supplied for other than a domestic purpose within sect. 12 of the Waterworks Clauses Act, 1863.

HARROGATE CORPORATION v. MCKAY, [1907] 2 K. B. 611; 76 L. J. K. B. 977; 71 J. P. 458; 97 L. T. 689; 23 T. L. R. 632; 5 L. G. R. 876—Div. Ct.

**9. Insufficiency of Supply — Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 43.**—The provision of sect. 43 of the Waterworks Clauses Act, 1847, imposing a penalty on a water company for the neglect or refusal to furnish a supply of water to a person entitled to receive it only applies to the case of a complete interruption of the supply, and not to the neglect to supply a sufficient quantity.

SIMPSON v. SOUTH OXFORDSHIRE WATER AND [GAS Co., [1908] 1 K. B. 917; 77 L. J. K. B. 461; 72 J. P. 162; 98 L. T. 585; 24 T. L. R. 407; 6 L. G. R. 454—Div. Ct.

**WAYS.**

See EASEMENTS; HIGHWAYS.

**WEIGHTS AND MEASURES.**

COL.

I. INSPECTORS . . . . .	670
[No paragraphs in this vol. of the Digest.]	
II. SALE OF COAL . . . . .	670
III. WEIGHING AND WEIGHING MACHINES . . . . .	671
IV. MISCELLANEOUS . . . . .	672
[No paragraphs in this vol. of the Digest.]	

**I. INSPECTORS.**

[No paragraphs in this vol. of the Digest.]

**II. SALE OF COAL.**

**1. Delivery in Sacks—Separate Loads—Weight Ticket—Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 21, sub-s. 1.**—Where coal is delivered under one order in several loads in sacks of a specified number and weight, a ticket delivered with the first load of coal, before any coal is unloaded, is a sufficient compliance with sect. 21, sub-sect. 1, of the Weights and Measures

**Sale of Coal—Continued.**

Act, 1889, and a separate ticket with each load subsequently delivered is not required.

*Stangoe v. Slatter* ((1896) 60 J. P. 342) distinguished.

KYLE v. DUNSDON, [1908] 2 K. B. 293; 77 [L. J. K. B. 547; 72 J. P. 292; 98 L. T. 752; 24 T. L. R. 505; 6 L. G. R. 578—Div. Ct.

2. *Weight of a Sack of Coal—Representation by Seller—Liability of Carter—Mens rea—Weights and Measures Act, 1889* (52 & 53 Vict. c. 21), s. 29, sub-s. 2.]—The appellant was a carter employed by coal merchants, and was sent by them in charge of a cart to deliver coal which they had sold. The coal was in sacks, each of which was labelled 1 cwt. A number of sacks were short in weight, but the appellant did not know this.

HELD—that in the absence of *mens rea* the appellant could not be convicted of an offence against sect. 29, sub-s. 2, of the Weights and Measures Act, 1889.

PAUL v. HARGREAVES, [1908] 2 K. B. 289; 77 [L. J. K. B. 535; 72 J. P. 231; 98 L. T. 751; 24 T. L. R. 501; 6 L. G. R. 530—Div. Ct.

### III. WEIGHING AND WEIGHING MACHINES.

3. *Unjust Measure—Possession for Use “for Trade”—Milk Churns—Used for Conveyance of Milk—Not Used as Measures—Weights and Measures Act, 1878* (41 & 42 Vict. c. 49), s. 25.]—The respondents were the owners of a milk churn which they supplied to a farmer for the purpose of sending his milk to their dairy. The churn was marked with discs which were apparently intended to represent barn gallons, but did not accurately do so. The respondents were summoned for having in their possession for use for trade an unjust measure, viz., the churn in question. The farmer stated in evidence that the marks on the churn were the foundation of his bills to the respondents. The respondents' secretary stated that they never measured by the discs or intended them to be used as measures, and that they were really only an index to the height of the milk in the churn. The justices found as a fact that the churn was in the possession of the defendants for use for trade, but as a vessel for the conveyance of milk only, and not as a measure, and they dismissed the summons.

HELD—that as there was evidence on which they could so find, the magistrates' decision must be affirmed, and, *semble*, the Court agreed with it.

BELLAMY v. GREAT WESTERN AND METROPOLITAN DAIRIES, LD., 72 J. P. 284; 98 L. T. 757; 6 L. G. R. 772—Div. Ct.

4. *Unjust Measure—Possession for Use in Trade—Possession of Servant for his own Purposes—Liability of Employer—Weights and Measures Act, 1878* (41 & 42 Vict. c. 49, s. 25.)—The appellants were convicted of having in their possession for use for trade a false or unjust measure contrary to sect. 25 of the

Weights and Measures Act, 1878. A servant of the appellants had been sent out with a tank waggon containing oil, and had in his possession two five-gallon measures for the purpose of measuring oil sold and delivered to the appellants' customers from the tank waggon. One of such measures was correct, but the other (which also belonged to the appellants) was found to contain a quantity of soap which rendered it false and unjust to the extent of three and a half pints. The measures supplied to the appellants' servant were correct, but other measures set aside for repair were accessible to him. The oil in each waggon was checked morning and evening, and the servant did not bring back more oil than his deliveries during the day accounted for. The appellants were not cognisant of their servant's conduct, nor did they give their sanction and approval to the use by him of the unjust measure.

HELD—that the conviction must be quashed, since, although *mens rea* on the part of the employers was not an element in the offence, the physical possession of the unjust measure by the appellants' servant for his own fraudulent purposes was not in the circumstances the possession of the appellants.

ANGLO-AMERICAN OIL CO., LD. v. MANNING, [1908] 1 K. B. 536; 77 L. J. K. B. 205; 72 J. P. 35; 98 L. T. 570; 24 T. L. R. 215; 6 L. G. R. 299—Div. Ct.

### IV. MISCELLANEOUS.

[No paragraphs in this vol. of the Digest.]

## WESTERN AUSTRALIA.

*See* DEPENDENCIES AND COLONIES.

## WHARVES.

*See* MASTER AND SERVANT; SHIPPING AND NAVIGATION.

## WILD BIRDS PROTECTION.

*See* ANIMALS.

## WILLS.

I. TESTAMENTARY CAPACITY . . .	COL. 674
II. EXECUTION.	
(a) Attestation . . .	675
(b) Generally . . .	675
(c) Signature of Testator . . .	676
(d) Soldiers' and Seamen's Wills . . .	676
[No paragraphs in this vol. of the Digest.]	
(e) Testamentary Documents . . .	676



## Wills—Continued.

	COL.
III. INCORPORATION OF DOCUMENTS . . . . .	676
IV. REVOCATION.	
(a) Destruction . . . . .	677
(b) Generally . . . . .	677
[No paragraphs in this vol. of the Digest.]	
(c) Revocation of Gift . . . . .	677
V. ALTERATIONS AND ERASURES . . . . .	678
VI. MISTAKE AND AMBIGUITY.	
(a) Ambiguity . . . . .	678
(b) Clerical Error . . . . .	679
(c) Evidence of Intention . . . . .	679
(d) Misdescription . . . . .	679
(e) Mistake of Fact . . . . .	681
[No paragraphs in this vol. of the Digest.]	
VII. INTERPRETATION OF TERMS.	
(a) "Books" . . . . .	681
(b) "Belonging to" a House . . . . .	681
(c) "Cash at my Bankers" . . . . .	682
(cc) "Carriages" . . . . .	682
(ccc) "Cousins" . . . . .	682
(d) "Debentures" . . . . .	682
(e) "House and its Contents" . . . . .	683
(f) "Household Furniture and Effects" . . . . .	683
(ff) "Miscellaneous" . . . . .	683
(g) "Money" . . . . .	683
(h) "Money Deposited in Savings Bank" . . . . .	684
(i) "My Tin Despatch Box" . . . . .	684
(k) "Pictures" . . . . .	684
(l) "Rest of my Investments" . . . . .	684
(m) "Site" . . . . .	685
(n) "Widow" . . . . .	685
(o) "Widowhood" . . . . .	685
VIII. SECRET TRUST . . . . .	686
[No paragraphs in this vol. of the Digest.]	
IX. ELECTION . . . . .	686
X. ADEMPTION . . . . .	687
XI. SATISFACTION . . . . .	687
[No paragraphs in this vol. of the Digest.]	
XII. HOTCHPOT . . . . .	687
XIII. SUBSTITUTIONAL GIFT . . . . .	689
XIV. CLASS GIFTS . . . . .	689
XV. LAPSE . . . . .	692
XVI. ABSOLUTE GIFT . . . . .	692
XVII. CONDITIONS.	
(a) Condition Precedent or Subsequent . . . . .	693
[No paragraphs in this vol. of the Digest.]	
(b) Contingent Gift . . . . .	694
[No paragraphs in this vol. of the Digest.]	
(c) Forfeiture . . . . .	694
[No paragraphs in this vol. of the Digest.]	
(d) Heirlooms . . . . .	694
[No paragraphs in this vol. of the Digest.]	
(e) Name and Arms Clauses . . . . .	694
[No paragraphs in this vol. of the Digest.]	
(f) Restraint of Marriage . . . . .	694
[No paragraphs in this vol. of the Digest.]	
(g) General . . . . .	624
XVIII. VESTING . . . . .	694
[No paragraphs in this vol. of the Digest.]	
Y.D.	

	COL.
XIX. DIVESTING . . . . .	694
[No paragraphs in this vol. of the Digest.]	
XX. PERPETUITIES AND REMOTENESS . . . . .	694
XXI. CREATION OF ESTATE TAIL . . . . .	694
[No paragraphs in this vol. of the Digest.]	
XXII. DIRECTIONS TO TRUSTEES.	
(a) Investment Clause . . . . .	694
[No paragraphs in this vol. of the Digest.]	
(b) Maintenance . . . . .	694
[No paragraphs in this vol. of the Digest.]	
(c) Miscellaneous . . . . .	695
[No paragraphs in this vol. of the Digest.]	
(d) Precatory Trusts . . . . .	695
[No paragraphs in this vol. of the Digest.]	
XXIII. CONVERSION.	
(a) Leaseholds . . . . .	695
[No paragraphs in this vol. of the Digest.]	
(b) Power of Postponement . . . . .	695
(c) Tenant for Life and Remainderman . . . . .	695
XXIV. PAYMENT OF DEBTS AND LEGACIES.	
(a) Abatement . . . . .	696
(b) Apportionment . . . . .	696
(c) Charge on Real Estate . . . . .	696
(d) Exoneration of Mortgaged Property . . . . .	697
(e) Interest on Legacies . . . . .	698
XXV. SURVIVORSHIP . . . . .	698
[No paragraphs in this vol. of the Digest.]	
XXVI. EXERCISE OF POWER OF APPOINTMENT . . . . .	698
XXVII. ANNUITIES . . . . .	698
XXVIII. CHARITABLE BEQUESTS . . . . .	699
XXIX. CONDITIONAL WILLS . . . . .	699
[No paragraphs in this vol. of the Digest.]	
XXX. MUTUAL WILLS . . . . .	699
[No paragraphs in this vol. of the Digest.]	
XXXI. CONFLICT OF LAWS . . . . .	699
XXXII. MISCELLANEOUS . . . . .	699
<i>See also</i> CHARITIES; CONFLICT OF LAWS, No. 7; DEATH DUTIES; DESCENT AND DISTRIBUTION; EXECUTORS; FRIENDLY SOCIETIES; HIGHWAYS; PARTNERSHIP, No. 2; POWERS; SETTLEMENTS; TRUSTS.	

## I. TESTAMENTARY CAPACITY.

1. *Propounder Benefiting by Will which he has Drafted—Burden of Proof—Knowledge of Testatrix.*—Where a plaintiff propounds a will which he has drafted for the testatrix and under which he benefits to a large extent, the burden is on him of proving that the document in question did really express the mind and intention of the testatrix, that she was conscious when she executed it, that it really was her will, and that

**Testamentary Capacity—Continued.**

she meant it to be the expression of her mind and intention.

*Barry v. Butlin* (2 Moo. P. C. 480), *Fulton v. Andrews* (L. R. 7 H. L. 448), *Tyrrell v. Painton* ([1894] P. 151) followed and applied.

*FINNY v. GOVETT AND OTHERS*, *Times*, Decem-ber 17th, 1908—C. A.

**II. EXECUTION.****(a) Attestation.**

**2. Separate Sheets of Paper Separately Signed and Witnessed—Separate Testamentary Documents—Effect of Attesting One on Legacy under Another.**—Separate sheets of paper, separately signed by the testatrix and separately witnessed on the same day, and dealing with different portions of the testatrix's property, held, in the circumstances, to be different documents, and a legatee under one document, held, not to be deprived of a benefit derived under that document by reason of having attested one or more of the later documents.

*IN RE CRAVEN, CREWDSON v. CRAVEN*, 99 L. T. [390; 24 T. L. R. 750—Eady, J.

**(b) Generally.**

**3. Mutual Codicils—Wrong Codicil Signed—Refusal to Rectify.**—A testatrix and her sister were making cross-codicils in identical terms. Each in error signed her sister's codicil instead of her own. Upon the death of one the Court refused to admit the codicil to probate by striking out the Christian name of the sister.

*RE MEYER*, [1908] P. 353; 77 L. J. P. 150; 52 [Sol. Jo. 716—Barnes, Pres.

**4. Scots Law—British Subject—Valid Scotch Will Executed in Scotland.**—Among the papers of the deceased were found two documents in her handwriting, dated June 28th, 1906, on which day she had returned to London from a visit to Scotland. The first, in the form of a letter to her solicitor, recited that she was returning to London that night, and gave certain instructions as to the disposal of her property in case of accident. The second, headed "In case of my death, and not having made a proper will," contained specific legacies to various relatives, and was signed "Rachel Batho, June 28th, 1906." According to Scots law such signed holograph documents formed a probative and valid last will and testament. By the Conveyancing and Land Transfer (Scotland) Act, 1874, s. 40, every holograph writing of a testamentary character is, in the absence of evidence to the contrary, to be deemed to have been executed or made of the date it bears.

**HELD**—that it was immaterial to consider whether or not the whole of the second document was written in Scotland provided that it was signed and concluded there, that if this was a valid will according to Scots law, Lord King-down's Act applied, and that on internal evidence

these documents were testamentary and amounted to a will.

*BATHO AND ANOTHER v. CROSS AND ANOTHER*, [52 Sol. Jo. 318—Barnes, Pres.

**(c) Signature of Testator.**

**5. Name Pencilled for Guidance—Acknowledgment by Testator of Signature—Wills Act, 1837 (1 Vict. c. 26), s. 9.**—The provisions of sect. 9 of the Wills Act, 1837, which provides that it is necessary that a will "shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction," must be strictly complied with.

A name pencilled beforehand merely to indicate where the testator is to sign cannot comply with these requirements, and cannot be acknowledged by the testator.

*REEVES v. GRAINGER AND OTHERS*, 52 Sol. Jo. [355—Barnes, Pres.

**(d) Soldiers' and Seamen's Wills.**

[No paragraphs in this vol. of the Digest.]

**(e) Testamentary Documents.**

**6. Will on Separate Sheets—Not Attached Together—Due Execution.**—A testator wrote his will on two separate sheets of paper, stating at the top of the first and at the bottom of the second that the writing was his will. He held both sheets together whilst he acknowledged to two persons his signature on the second sheet, stating that the document was his will, and they thereupon also signed the second sheet as witnesses.

**HELD**—that the two sheets were sufficiently attached at the time of execution and must be admitted to probate.

*LEWIS v. LEWIS AND OTHERS*, [1908] P. 1; [77 L. J. P. 7; 98 L. T. 58; 24 T. L. R. 45—Deane, J.

**7. Interlineation — Codicils to Will.**—A testator who had made a codicil to his will on the back of the sheet of paper on which the will was written, desiring to revoke certain legacies, wrote in the space between the last words of the codicil and his signature to the codicil words to the effect that he revoked the legacies. Immediately after having done that, without any interval of time, the testator wrote a second codicil immediately underneath the signature to the first codicil, and this codicil was duly signed and witnessed.

**HELD**—that the interlined words formed part of the second codicil.

*IN THE ESTATE OF LUNN, OLDROYD v. HARVEY*, [[1907] P. 326; 98 L. T. 56; 23 T. L. R. 728—Deane, J.

**III. INCORPORATION OF DOCUMENTS.**

**8. Memorandum—Reference—Identity—Parol Evidence.**—The testator made a will by which he gave to the University of Wales £10,000 for the foundation of scholarships and prizes upon terms contained in any memorandum amongst his papers written or signed by him relating

### Incorporation of Documents—Continued.

thereto. He also gave £10,000 to the University College of North Wales upon the same terms. A memorandum was then in existence in which the testator referred to the bequests he had made to the above-mentioned objects, and he attached two conditions of a theological nature to be obligatory on every winner of a prize in a competition—(1) the belief in God, and (2) the acceptance of and belief in the Protestant faith; and it went on to state that every winner of a prize or scholarship in any competition was to be of Welsh birth.

HELD—that the reference in the will to “any memorandum” was wide enough to include future as well as existing memoranda, and that therefore parol evidence to show what memorandum was referred to was not admissible; further, the evidence, which had been admitted, proved that the testator intended to include any future memorandum.

Decision of Barnes, Pres. ([1907] P. 229; 76 L. J. P. 49; 96 L. T. 587; 23 T. L. R. 395) reversed.

UNIVERSITY COLLEGE OF NORTH WALES AND [OTHERS v. TAYLOR AND OTHERS, [1908] P. 140; 77 L. J. P. 20; 98 L. T. 472; 24 T. L. R. 29—C. A.

## IV. REVOCATION.

### (a) Destruction.

9. *Dependent Relative Revocation—Testator Burning Will—Invalid Testamentary Document.*—The testatrix made her will in 1901. In 1907 she wrote out a document which she thought to be a valid will, but which was in fact invalid, in that her signature was not attested. The testatrix destroyed the will of 1901 in the belief that the document of 1907 was a valid will. There was evidence of the due execution of the will of 1901, and that the provisions contained in the completed draft which was put in evidence were in accordance with those in the will. On an application for probate of the will of 1901 as contained in the draft, the consent of each of the next-of-kin who were all *sui juris* having been obtained to the application, the Court made an order as prayed.

IN THE ESTATE OF IRVIN, 25 T. L. R. 41— [Barnes, Pres.]

### (b) Generally.

[No paragraphs in this vol. of the Digest.]

### (c) Revocation of Gift.

10. *Allowance to Widow—Allowance for Maintenance of Children till Youngest Attains Twenty-one—Residue then to be Divided among Sons—Codicil—Power to Increase Wife's Allowance—Disposition of Residue in Event of Children Dying Without Issue—Bequest of Residue to Sons Not Cut Down by Codicil.*—A will directed the trustee and executor to pay an annual sum to the testator's wife for life, to pay an annual sum to the testator's children for their maintenance till the youngest should attain the age of twenty-

one years, and then to settle certain sums on his daughters and to divide the residue equally among his sons then living. A codicil authorised the trustee in his discretion to increase the payment to the widow, and then declared that, “In the event of all my children dying without leaving lawful issue,” the testator gave all his estate to his brother.

HELD—that the provisions of the codicil did not conflict with, but were supplementary to, the provisions of the will; that the codicil merely sought to deal with two contingencies not touched by the will, and did not revoke, cut down, or make contingent the dominant bequest to the sons, and that the power given to the trustee to increase the widow's allowance did not postpone the distribution of the residue until the widow's death, as she had agreed to such distribution, subject to a sum being set apart to provide an ample increase in her allowance.

HORDERN AND ANOTHER v. HORDERN, *Times*, [December 17th, 1908—P. C.]

11. *Class Gift—Revocation by Codicil—Lapse of Share—Intestacy.*—D. left all his residuary estate upon trust for conversion, the proceeds to be divided into as many equal shares as he should have daughters who should survive him or predecease him leaving issue, one share to go to each such daughter.

He had six daughters who all survived him, but by a codicil he revoked the gift to one of them.

HELD—that the residue must be divided into fifths, and that there was not an intestacy as to one-sixth part.

IN RE DUNSTER, BROWN v. HEYWOOD, [1908] [W. N. 223—Neville, J.]

## V. ALTERATIONS AND ERASURES.

See No. 7, *supra*.

## VI. MISTAKE AND AMBIGUITY.

### (a) Ambiguity.

12. *“Charitable Legacy”—Claim by Two Institutions—One “Charitable,” but not at Address Given—Other at Right Address, but not “Charitable.”*—A testatrix bequeathed a charitable legacy to the “Church of England Building Society, 22, Chancery Lane.” There were two societies both known by the name of “Church Building Society,” one not a “charitable” institution, with offices at 22, Chancery Lane, and the other “charitable,” but at another address. The testatrix had made two donations to the latter many years ago, and its reports had been regularly sent to her, while it did not appear that she had ever heard of the former.

HELD—that the words introducing this and other gifts as “charitable” were the dominating consideration, and that the “charitable” institution, and not the institution whose address was given correctly, was entitled to the legacy.

IN RE EVERARD, WOODWARD v. PHILLIPS, [*Times*, June 1st, 1908—Eady, J.]



**Mistake and Ambiguity—Continued.**

**13. General Words—Imperfect Enumeration—Specific Devise by General Words—General Words Cut Down by Subsequent Words of Enumeration—Effect of Word “Namely.”**—By her will a testatrix devised the real estate to which under the codicil to the will of her father she became entitled, “namely,” the residence, O. House, in the parish of O., in the county of Essex, and lands and hereditaments in the parishes of O., S., M. and H., in the same county, to her sister. The real estate to which the testatrix became entitled under the said codicil also included 1, Hare Court, Temple; but there was no evidence as to her knowledge of this fact. Upon the question whether 1, Hare Court, was included in the specific devise or in the residuary estate,

HELD—that the specific enumeration was intended to be the leading description, and was not merely an imperfect enumeration of property intended to be devised, and that 1, Hare Court, was not included in the specific devise, and fell into the residuary estate.

*West v. Lawday* ((1865) 11 H. L. C. 375), considered.

IN RE BROCKET, *DAWES v. MILLER*, [1908] 1 [Ch. 185; 77 L. J. Ch. 245; 97 L. T. 780; 52 Sol. Jo. 159—Joyce, J.

**(b) Clerical Error.**

**14. Supplying Words from Context.**—A testator left all his property to A. for life, with a power of appointment in case of her death unmarried or without issue. There was no gift over in default of appointment; but the power of appointment was given “subject as hereinafter set forth,” and in a later clause the testator provided that “in the event of my said daughter, under the circumstances before detailed, in case of non-marriage or no issue living at the time of her decease,” all his property was to go to certain persons named.

HELD—that it was clear that some word or words were or were omitted in the latter clause which provided for the event of the daughter doing or not doing something, but did not say what; and that the Court should supply the words “failing to exercise the said power of appointment” in order to effectuate the testator’s intention, which had been imperfectly expressed, but was to be gathered from the context and the whole will.

Decision of Barton, J. ([1907] 1 I. R. 440), affirmed.

MUNRO v. HENDERSON, [1908] 1 I. R. 263—C. A.

**(c) Evidence of Intention.**

See Nos. 15 to 19, *infra*.

**(d) Misdescription.**

**15. Misdescription—“Nieces and Nephews”—Uncertainty.**—A testatrix bequeathed certain stocks and shares to her “nieces and nephews,” coupled with the following directions: “None of them to be sold, but the father’s and mother’s name to be put in instead of mine, and they to receive the interest for them until they are

twenty-one years old.” The will concluded as follows: “If my husband should require money, he can get some of the interest of what is left to the children, the remainder to go for their keep.” At the date of the will all the children of the testatrix’s brothers and sisters were of age, and none of them had both father and mother living. Several grandchildren, with their father and mother, lived with the testatrix, and evidence was offered that she used to refer to them as “the little children,” and expressed an intention to benefit them.

HELD—that there were sufficient materials in the will, with the help of admissible explanatory evidence, to show that the testatrix, in making a bequest to her “nieces and nephews,” did not refer to the children of her brothers and sisters, but that there were not sufficient materials of a legal and admissible kind to enable the Court to determine definitely the objects of the bequest, and that consequently it was void for uncertainty.

M’HUGH v. M’HUGH, [1908] 1 I. R. 155 — [Barton, J.

**16. Misdescription—Shares in a Bank—Amalgamation with other Bank—Admissibility of Extrinsic Evidence—Wills Act, 1837 (1 Vict. c. 26), s. 24.**—For some years down to 1899 J. had twenty-five shares in the S. and W. Banking Co., Ltd. In 1899 the bank was absorbed in Barclay & Co., Ltd., and J. received in exchange twenty-five shares in that company.

By her will made in 1902 J. bequeathed to two legatees equally “all my shares in the S. and W. Banking Company.”

Evidence was admitted to show that J. held no other bank shares, that she disliked the amalgamation and spoke of Barclays as the “absorbed” bank, and that the local branch preserved the old title on its door-plate and cheques.

HELD—that the legatees took the twenty-five shares in Barclay & Co., Ltd.

IN RE JAMESON, *KING v. WINN*, [1908] 2 Ch. [111; 77 L. J. Ch. 729; 98 L. T. 745—Eve, J.

**17. Misdescription—Wrong Christian Name—Explanatory Evidence—Admissibility.**—A testator gave a legacy to his “grandnephew,” “Robert O.” He had in fact no grandnephew or relative called Robert O. A contemporaneous document in the testator’s own writing—instructions for the will in question—showed that the legacy was intended for Richard O., for the document described the legatee as brother of A. O., and the latter’s brother was admittedly called Richard.

HELD—that the document was admissible, and that Richard O. was entitled to the legacy.

IN RE OFNER, *SAMUEL v. OFNER*, [1908] W. N. [208—C. A.

**18. Mistake—Mistake as to Number of Children Living—Rejection of Specified Number.**—A testator left money in trust for certain named persons and “the six children of O.” in equal shares. By a codicil he declared that by “the

**Mistake and Ambiguity** *Continued.*

six children of O." he meant the "six children now living of O. by his first wife E. O., formerly E. S." Five of O.'s six children were in fact dead at the date of both will and codicil; the testator was eighty-five years of age.

**HELD**—that the Court, finding a dominant intention to benefit a particular class though coupled with a mistake in enumerating the members thereof, would presume that he had made a mistake in the enumeration, and that the trust funds must be equally divided between the named persons and the one surviving child of O.

*Garvey v. Hibbert* ((1812), 19 Ves. 125) applied.

**IN RE SHARP, MADDISON v. GILL**, [1908] 1 Ch. 372; 77 L. J. Ch. 251; 98 L. T. 234—Joyce, J.

**Affirmed**, [1908] 2 Ch. 190; 77 L. J. Ch. 724; [99 L. T. 129—(A. A.

**19. Mistake—"My" Mother—Meaning Mother of Person Instructed to Draw Will—Exclusion of Words from Probate Correction of Misdescription of Legatee.**—A testator, whose assets were very small, after giving some pecuniary legacies, left "rest to my mother—all furniture also to my mother." The will was drawn up in the testator's presence by his nephew S., whose mother was testator's sister. The testator told S. that he wished to leave his furniture and the rest of his property to "your mother," meaning his sister. S. wrote the words above mentioned in the will, to carry out the testator's directions, but by mistake he inserted the word "my" before the word "mother."

The Court made an order that the word "my," where it occurred before the word "mother," should be struck out and not included in the probate; and, being of opinion that the word "mother" was intended to refer to S.'s mother, and that she was therefore the residuary legatee, gave her liberty to apply for administration *cum testamento annexo*.

**IN RE WRENN**, [1908] 2 I. R. 370—K. B. D.

**(e) Mistake of Fact.**

[No paragraphs in this vol. of the Digest.]

**VII. INTERPRETATION OF TERMS.****(a) "Books."**

**20. "Books"**—*Manuscript Music in Permanent Binding.*

**HELD**—that the word "books" in a will included manuscript music on separate sheets of paper bound together into a volume by a book-binder.

**IN RE PLOWDEN, PLOWDEN v. PLOWDEN**, 24 [T. L. R. 883—Eady, J.

**(b) "Belonging to" a House.**

**21. "Belonging to" a House—"Carriage in or Belonging to" a Certain House—Motor Car Temporarily at Another House of Testator.**—A testator shortly before his death bought a motor-car which he kept at his residence in Denbigh.

He also owned another residence in Cornwall, and while motoring there he caught a chill and died there, the motor-car being at the time of his death at his Cornish residence. By his will he gave to his elder son all his carriages in or about or belonging to his Denbigh house, and to his younger son all his carriages in or about or belonging to his Cornish house.

**HELD**—that the motor-car was a carriage, and passed to the elder son as "belonging to" the Denbigh house.

**IN RE DENIS, DENIS v. DENIS**, 24 T. L. R. 499 [—Eve, J.

**(c) "Cash at My Bankers."**

**22. "Cash at my Bankers"**—*Money on Deposit and Stocks.*

**HELD**—that the words "cash at my bankers" passed to the legatee only money on current drawing account and money on deposit payable on demand without notice.

**IN RE BOORER, BOORER v. BOORER**, [1908] [W. N. 189—Parker, J.

**(cc) "Carriages."**

**23. "Carriages"—Motor Car.**—By his will D. directed his trustees to make over his landed estate to his wife, and with certain small exceptions, his whole "furniture and plenishing, including books, plate, pictures, jewellery, ornaments, and bed and table linen, and also my horses and carriages, live stock, plants, and garden and stable implements." The will was made in 1890, and at the date of his will he had carriages and horses, but subsequently he sold those and bought two motor cars.

**HELD**—that the bequest of carriages included the motor cars.

**DENHOLM'S TRUSTEES v. DENHOLM**, [1908] [S. C. 43—Ct. of Sess.

**(ccc) "Cousins."**

**24. "Cousins."**—The word "cousins" in a will means first cousins only, unless there is something in the context or in the circumstances of the case to show that the word is used in a different sense.

**COPLAND'S EXECUTORS v. MILNE**, [1908] S. C. [426—Ct. of Sess.

**(d) "Debentures."**

**25. "Debentures"—Debenture Stock—Whether Included.**—A testator by his will bequeathed to a legatee "all my debentures and preferred and deferred stock in the Municipal Trust Company, Ltd." At the dates of the will and of his death the testator held debenture stock, preferred and deferred stock, and also debenture stock in the company. The amount of the debentures and the debenture stock was, with a slight difference, repayable on the happening of the same events, and when the same person held both he received one warrant for interest in respect of both, the interest being called debenture interest. In the company's balance sheet the trustees for the debenture stockholders were called trustees

**Interpretation of Terms—Continued.**

for the debenture-holders. The security was a floating charge in the case of each, the debentures having priority over the debenture stock.

HELD—that the debenture stock passed under the bequest of “all my debentures.”

IN RE HERRING, MURRAY *v.* HERRING, [1908]  
[2 Ch. 493; 77 L. J. Ch. 665; 99 L. T. 144;  
24 T. L. R. 747—Joyce, J.]

**(e) “House and its Contents.”**

26. “*House and its Contents*”—*Share Certificates and Securities*—“*Pictures*”—*Miniatures*—“*Rest of my Investments*”—*Money at Bank*—*Separate Sheets of Paper Separately Signed and Witnessed*—*Separate Testamentary Documents*.]

—A gift by will of a “house and its contents” does not, as a general rule, pass things which are evidence of property outside the house. Such a gift held, therefore, not to include title deeds to land or stock and share certificates.

A bequest of “pictures” held to include miniatures.

A bequest of “the rest of my investments,” held, in the circumstances, to mean a residuary gift of the rest of her property.

IN RE CRAVEN, CREWDSON *v.* CRAVEN, 99 L. T.  
[390; 24 T. L. R. 750—Eady, J.]

**(f) “Household Furniture and Effects.”**

27. “*Household Furniture and Effects*”—*Motor-cars*.

HELD—that a gift of “my house T. . .” and “all my household furniture and effects in T.” included three motor-cars kept in a motor house in the yard of T.

IN RE HOWE, FERNIEHOUGH *v.* WILKINSON,  
[[1908] W. N. 223—Eve, J.]

**(ff) “Miscellaneous.”**

28. *Bequest to Library of Manuscripts “which are at L. Hall”*—*Manuscripts at L. Hall at Date of Will, but in Library at Date of Death*.]—A testatrix by her will gave to the John Rylands Library all her books (bound or unbound), manuscripts, and some other things, “which are at Longford Hall.” She had purchased a valuable collection of manuscripts, most of which were at the Hall at the time of the will, but at the library at the time of her death.

HELD—that all the manuscripts went to the library.

CARNELLY *v.* COZENS-HARDY AND OTHERS,  
[Times, July 25th, 1908—Parker, J.]

**(g) “Money.”**

29. “*Money*”—“*My Tin Despatch Box*”—*Box containing Securities*.]—By his will the testator, after making certain specific bequests of certain shares, bequeathed “all other shares or moneys” to his son, grandson, and other persons, and he directed that “money left to my

daughter dying without children or leaving no surviving children to go into this trust.”

HELD—that “money” applied only to cash in the house, money at the bank, or in the hands of agents, and to any other ready money at call at the testator’s death, and did not extend to money invested in Consols or other securities.

By a codicil the testator bequeathed to his son “my tin despatch box, at present at the Wilts and Dorset Bank.” The box contained securities of considerable value.

HELD—that only the box and not its contents passed to the legatee.

IN RE HUNTER, NORTHEY *v.* NORTHEY, 25  
[T. L. R. 19—Eve, J.]

**(h) “Money Deposited in Savings Bank.”**

30. *Bequest of Money Deposited in the Post Office Savings Bank—Cash on Deposit—Consolidated Stock Bought through Post Office Savings Bank—Whether Stock Included in Bequest*.]—

A testatrix at the time of her death was entitled as part of her estate to a sum of £212 12s. 1d. cash on deposit at a Post Office Savings Bank and a sum of £289 17s. 9d. Two and a Half per Cent. Consolidated Stock which had been bought through the Post Office Savings Bank with money standing to the credit of her deposit account. By her will she bequeathed to her two nieces “the money deposited in the Post Office Savings Bank.”

HELD—that not only the sum on deposit, but also the amount invested in Consols passed under the bequest.”

RE ADKINS, SOLOMON *v.* CATCHPOLE, 98 L. T.  
[667—Eve, J.]

**(i) “My Tin Despatch Box.”**

31. “*My Tin Despatch Box*”—*Box Containing Securities*.]—By a codicil a testator bequeathed to his son “my tin despatch box, at present at the Wilts and Dorset Bank.” The box contained securities of considerable value.

HELD—that only the box and not its contents passed to the legatee.

IN RE HUNTER, NORTHEY *v.* NORTHEY, 25  
[T. L. R. 19—Eve, J.]

**(k) “Pictures.”**

32. “*Pictures*”—“*Paintings*”—*Miniatures Included*.

HELD—that gifts of “pictures” and “paintings” included miniatures.

IN RE CONYNGHAM (MARCHIONESS), RAMSDEN  
[*v.* CONYNGHAM, 24 T. L. R. 789—Joyce, J.]

See also IN RE CRAVEN (No. 26, *supra*).

**(l) “Rest of my Investments.”**

33. “*Rest of my Investments*”—*Money at Bank*.]—A bequest of “the rest of my investments” held, in the circumstances, to mean a residuary gift of the rest of her property.

IN RE CRAVEN, CREWDSON *v.* CRAVEN, 99 L. T.  
[390; 24 T. L. R. 750—Eady, J.]



**Mistake and Ambiguity—(continued).****(m) "Site."**

**34. Money Left to Build Picture Gallery—**  
**"Site" Provided by the Corporation of a Town—**  
*Gallery on First Floor of Town Hall.*—A testator by his will bequeathed to the corporation of the city of Birmingham £50,000 "to be applied by them towards the cost of erecting a new picture gallery on a site provided by the corporation. If the whole legacy should not be so expended, then any surplus which may arise shall be expended on buying paintings by the old English masters." The testator knew that the corporation were proposing to erect municipal buildings, and that part of the first floor thereof was to be devoted to a new art gallery. The will did not show any desire on the part of the testator to have his name associated with the gallery.

HELD—that the word "site" in the will was not, in the circumstances, limited to an area on the ground level, but included the area on the first floor of the new municipal buildings.

IN RE FEENEY, INGLIS *v.* BIRMINGHAM CORPORATION, 24 T. L. R. 314—EVE, J.

**(n) "Widow."**

**35. "Wife," "Widow"—Bigamous Marriage—Secondary Meaning of "Widow."**—A testator, having gone through the ceremony of marriage with a married woman, made his will whereby he gave the income of his residuary estate to "my said wife during her life if she shall so long continue my widow for her own use and benefit and from or after her decease or second marriage" upon trust for children of the testator. The testator was never married to any other person, and at the time when he went through the ceremony of marriage he knew that his alleged wife had a husband living.

HELD—upon the true construction of the will, and having regard to the circumstances, that the testator used the word "widow" in a secondary sense, and that the woman with whom he went through the ceremony of marriage was entitled, as his "widow," to the income of the testator's residuary estate unless and until she contracted a marriage subsequent to the testator's death.

Decision of Kekewich, J. ([1907] 2 Ch. 35; 76 L. J. Ch. 369; 96 L. T. 605; 23 T. L. R. 426) affirmed.

IN RE WAGSTAFF, WAGSTAFF *v.* JALLAND, [1908] 1 Ch. 162; 77 L. J. Ch. 190; 98 L. T. 149; 24 T. L. R. 134.—C. A.

**(o) "Widowhood."**

**36. Life Interest to Husband—After his Death to his Wife "during widowhood"—Divorce.**—A testatrix by her will, dated September 20th, 1898, devised and bequeathed all her real and personal estate to trustees upon trust to sell and as to one equal third part upon trust to invest the income thereof to her son A. M. K. during his life, and after his death to pay the

income of the share to "his wife A. E. K. during her widowhood" with remainders over. The testatrix died on January 15th, 1901, and on May 6th, 1907, A. E. K. obtained an absolute decree of divorce against her husband, A. M. K., on the ground of his adultery and desertion. A. M. K. died on October 8th, 1907. Neither A. M. K. nor A. E. K. married again after the decree of dissolution. On a summons being taken out by the trustees to determine whether A. E. K. was entitled to be paid the income of the trust estate, and, if so, for what period:

HELD—that A. E. K. was not entitled to be paid the income, as the gift was to commence and finish with widowhood, and as the lady divorced her husband she never became a "widow," and the period of enjoyment specified had therefore never commenced.

RE KETTLEWELL, JONES *v.* KETTLEWELL, 98 [L. T. 23—Parker, J.

**VIII. SECRET TRUST.**

[No paragraphs in this vol. of the Digest.]

**IX. ELECTION.**

**37. Appropriate and Reprobate—Two Testamentary Dispositions—Election.**—The testator, who was a domiciled Scotsman, and who owned estates in Great Britain and Australia, left two testamentary instruments in Scotch form, executed on the same day, each of which was a trust disposition and settlement. One related exclusively to his estate in Great Britain and the other to his estate in Australia. Each trust disposition appointed separate trustees, so as to have an independent administration of such estate. In the deed relating to the British estate the testator declared that, whatever his domicile might be at his death, the deed should be construed and administered according to the law of Scotland, and in the deed relating to the Australian estate he declared that the deed should be interpreted and the trust administered according to the laws of New South Wales. Large bequests were made by the testator to his widow under the two deeds. The testator left no children. The widow upon her marriage had not renounced her legal rights under Scotch law as a Scotch widow—namely, *terce* and *jus relictæ*. The widow elected to take her rights as a Scotch widow under Scotch law—namely, one-half of the personalty and a life interest in one-third of his realty of the British estate—and she obtained a judgment to that effect in the Court of Session. She then claimed the bequests in her favour under the deed relating to the Australian estate.

HELD—that the two deeds constituted one testamentary disposition containing one coherent scheme of intention; that the widow having elected to reprobate the will in part could claim no interest under the other part; and that a person claiming under the Scotch will had a *locus standi* to oppose her claim since he was interested in protecting the Australian will so that the property dealt with by it might be

**Elections—Continued.**

available to compensate him and other persons who suffered by the widow's election.

DOUGLAS-MENZIES v. UMPHELBY, [1908] A. C. [224; 77 L. J. P. C. 64; 98 L. T. 509; 24 T. L. R. 344—P. C.]

**X. ADEMPTION.**

**38. Ademption — Bequest of Freehold and Leasehold Property—Double Portions.**—A testator by his will made in 1894 devised and bequeathed all his estate and effects, which included freehold and leasehold property, to trustees to hold till his youngest child should attain the age of twenty-five years and then to sell and realise and divide equally among his children.

In 1905 the testator made a voluntary settlement of certain real and leasehold property, declaring that the trustees of the settlement should at their own discretion sell the property, and should out of the income pay the sum of £50 per annum to each of his three daughters until certain events, and then should pay one-third of the income to each of his daughters for life. The testator died in 1907, leaving two sons and three daughters.

HELD—that the testator intended the property to be sold, and it must therefore be taken as personalty; that the shares of the daughters under the will were adeemed to the extent of the value of the interests taken by them under the settlement, and that such interests ought to be valued as at the date of the settlement.

IN RE INNES, BARCLAY v. INNES, 125 L. T. Jo. [60—Parker, J.]

**XI. SATISFACTION.**

[No paragraphs in this vol. of the Digest.]

**XII. HOTCHPOT.**

**39. Intestacy—Executors—Express Trust of Residue—Partial Failure of Beneficial Interests—Children Next of Kin—Previous Advancements to—Statute of Distribution, 1670 (22 & 23 Car. 2, c. 10), s. 5—Executors Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 40), s. 1.**—R. bequeathed the residue of his estate to his executors upon trust, as to £1,500 to invest and pay the income to his daughter A. for life, and after her death to divide the capital amongst her children, and as to the remainder in trust for all his children and their issue.

Upon A.'s death without children the £1,500 being not disposed of, passed to his next of kin, i.e. four daughters and the children of a deceased daughter. In distributing it:

HELD—that the Executors Act, 1830, did not apply, being only applicable to cases where there is a bare appointment of executors; and that advances made by R. to his daughters need not be brought into hotchpot, the rule being that the doctrine of hotchpot does not apply to a

case of partial intestacy of the beneficial interest.

*Jochell v. Jeffreys* ((1701), Prec. Ch. 170), *Wheeler v. Sheer* ((1730), Mos. 301), and *Cowper v. Scott* ((1731), 3 P. Wms. 119) followed.

*Williams v. Arkle* ((1875), L. R. 7 H. L. 606) applied.

Decision of *Neville, J.* ([1907] 2 Ch. 84; 76 L. J. Ch. 454; 97 L. T. 173) affirmed.

IN RE ROBY, HOWLETT v. NEWINGTON, [1908] [1 Ch. 71; 77 L. J. Ch. 169; 97 L. T. 773—C. A.]

**40. Advances—Rate of Interest.**—Interest on advances which have to be brought into hotchpot must still be calculated at 4 per cent., although probably a different rate is applicable in calculating interest as between life tenants and remaindermen.

IN RE DAVY, HOLLINGWORTH v. DAVY, [1908] [1 Ch. 61; 77 L. J. Ch. 67; 97 L. T. 654—C. A.]

**41. Advances—Shares in Residue—Unpaid Interest thereon.**—In calculating the amount of advances to children for the purposes of "hotchpot," such advances having carried interest:

HELD—that the amount of any unpaid interest owing at the testator's death ought not to be included in the advances.

In *re Hargreaves* ((1900) 88 L. T. 100—Romer, L. J.) followed.

IN RE GILBERT, GILBERT v. GILBERT, [1908] [W. N. 63—Neville, J.]

**42. Advances—Shares of Residue—Advances in Lifetime of Testator—Subsequent Authorised Advances by Trustees—Power to Postpone Conversion—Principle for Ascertaining Income Pending Distribution.**—P. by his will gave his residuary estate to trustees upon trust to sell and convert and to divide the proceeds into fifteen equal shares, and to distribute them among his children. He directed that for the purpose of ascertaining the shares certain advances which he had made to some of his children and certain payments which he authorised his trustees to make after his death should (with interest at 4 per cent. in certain cases from the date of his death or from the date of payment as the case might be) be debited against the shares of the children so advanced. He gave wide powers to his trustees to postpone the conversion of his estate, and directed that the actual intermediate income should be paid to the tenants for life.

Conversion was postponed, and a question arose as to the division of the income.

HELD—that for the purposes of computation interest at 4 per cent. ought (in cases where the testator had directed that such interest should be debited) to be added to the actual income for the time being, and the aggregate so arrived at ought to be divided into fifteen shares and distributed among the children, subject in the case of each advanced child to a deduction of

**Hotchpot—Continued.**

the interest on his advance or on the payment made to him.

*In re Hargreaves* ([1903] 88 L. T. 100—Romer, J.) explained and distinguished.

*IN RE POYSER, LANGDON v. POYSER*, [1908] 1 Ch. 828; 77 L. J. Ch. 482; 99 L. T. 50—Warrington, J.

**XIII. SUBSTITUTIONAL GIFT.**

**43. Alternatives—First Gift to be Absolute—Second Gift also Treated as Absolute.**—C. by his will left real estate to his widow for life, and at her death to his eldest son, John, for life, and then “to become the absolute property of” John’s eldest son, and “failing such son to become the property of my son James or of his eldest son” with a gift over failing either of such previous gifts. John predeceased his father, leaving no issue; James and his son survived the widow, but the son died in James’s own lifetime.

**HELD**—that the gift over failed if either James or his son lived to take absolutely. The absolute nature of the gift to John’s son must, in the absence of any expression of a contrary intention, be read into the alternative gift to James or his son.

*MCCORMICK v. SIMPSON & Co.*, [1907] A. C. 494; 77 L. J. P. C. 12; 97 L. T. 616—P. C.

**44. Legacy subject to Defeasance—Substituted Bequest in Codicil—Application of Defeasance to.**—A testator by his will bequeathed to each of his grandchildren by name the sum of £1,000, and after disposing of his residuary estate among his children and their issue he declared that if any child, or grandchild, or issue should marry a person not of the Jewish faith such child, grandchild, or issue should for the purposes of his will be deemed to have died in his lifetime under twenty-one and unmarried. By a codicil the testator revoked the legacies of £1,000 to each of his grandchildren, and in lieu thereof he bequeathed a sum of £1,500 to be held on trust for each of them for life, with remainder to their children and issue. One of the grandchildren married a person not of the Jewish faith.

**HELD**—that the condition as to forfeiture did not attach to the substituted settled legacy of £1,500, and that the legatee’s life interest was not forfeited.

Decision of *Eve, J.* ([1908] 1 Ch. 599; 77 L. J. Ch. 309; 98 L. T. 392; 24 T. L. R. 276) reversed.

*IN RE JOSEPH, PAIN v. JOSEPH*, [1908] 2 Ch. 507; 77 L. J. Ch. 832; 99 L. T. 539; 24 T. L. R. 770—C. A.

**XIV. CLASS GIFTS.**

*See also No. 11, infra.*

**45. Legacies to Infants—Infant en ventre sa mère—Interest Until Payment—Appropriation to meet Legacies—Trustee Act, 1893** (56 & 57 Vict. c. 53), s. 42.—S. by his will gave amongst other legacies £500 to each of his great-nieces “born previously to the date of this my will,” to whom

no other bequest was given by the will or any codicil thereto. He then gave his residuary estate to trustees upon trust for sale and conversion, directing them out of the proceeds to pay expenses, debts, and legacies, and to divide the net residue in a certain manner; he empowered them to postpone the sale and conversion, and also to postpone the payment of legacies until after such sale and conversion, but directed that legacies not paid within a year of his death should carry interest at 4 per cent.

**HELD**—(by the C. A., reversing *Kekewich, J.*) that a grand-niece *en ventre sa mère* at the date of the will and of the two codicils thereto and born alive subsequently was entitled to £500; and by *Kekewich, J.* (unappealed) that the trustees could not set free the residue by appropriating securities to meet the legacies due to such of the legatees as were infants, but could pay the legacies into court under sect. 42 of the Trustees Act, 1893, and that, upon their so doing, the provision as to interest would cease to operate.

Decision of *Kekewich, J.* ([1907] 2 Ch. 46; 76 L. J. Ch. 419; 96 L. T. 809) reversed on one point.

*IN RE SALAMAN, DE PASS v. SONNENTHAL*, [1908] 1 Ch. 4; 77 L. J. Ch. 60; 98 L. T. 255—C. A.

**46. “Then Surviving Children and their Respective Issue”—Words of Limitation—Alternative and Original Gift.**—A testator gave his residuary real and personal estate to his executors upon trust to apply the income in a certain way until the death of either of his executors. Upon the death of either he directed the survivor “to sell the whole of my real and personal estate, and to cause the same to be equally divided amongst my then surviving children and their issue.” Of the seven children who survived the testator two died before either executor and both left children who were still living. An executor (a child) having now died childless:

**HELD**—that the estate was divisible into as many shares as there were children who survived the period of distribution or predeceased that period leaving issue who so survived, viz., six, and that such surviving issue in each case took the share which the child so dying would have taken had he or she survived the period of distribution.

In gifts of personal property there is no rule that the word “issue” is *primâ facie* a word of limitation.

Such words as “and their [respective] issue” may mean either an alternative original gift or an alternative substitutional gift.

*IN RE COULDEN, COULDEN v. COULDEN*, [1908] 1 Ch. 320; 77 L. J. Ch. 209; 98 L. T. 389; 52 Sol. Jo. 172—Parker, J.

**47. Time for Ascertaining—Death of Testator or of Life Tenant—Next of Kin according to Statute.**—W. by his will gave funds to trustees upon trust for his nephew S. for life with remainder to children or grandchildren of S.; there



**Class Gifts — Continued.**

were provisions as to maintenance, education, and advancement.

In default of issue of S. living to attain vested interests, he directed the funds to be held in trust "for such person or persons as on the death of my said nephew S. will be entitled to [*sic*] as my next of kin under the Statute for the Distribution of Intestates Estates."

In 1884, when W. died, S. was his sole next of kin. S. died in 1906.

HELD—that, although the death of S. was not necessarily the period of distribution, the class to take were W.'s next of kin at the date of W.'s death, and not those who would have been his next of kin had he died when S. died; and that therefore S.'s executors were entitled to the funds.

*Bullock v. Downes* ((1860), 9 H. L. C.) applied.

Decision of Parker, J. ([1907] 1 Ch. 450; 76 L. J. Ch. 228; 96 L. T. 392) affirmed.

IN RE WILSON, WILSON v. BATCHELOR, [1907] 2 Ch. 572; 77 L. J. Ch. 13; 97 L. T. 656—C. A.

**48. Words of Futurity—Gift to Children—Gift to Child's Children if any Child "shall Die" in Lifetime of Testator—Child Dead at Date of Will—Inclusion of her Child.]—**A testator gave all his residuary estate to trustees, who were to pay out of income an annuity to his widow, and subject thereto during her life were to hold the surplus income in trust for his children in equal shares, such shares to be absolutely vested as therein mentioned, and if any of his children "shall have died in my lifetime, or shall die after my decease in the lifetime of my said wife, leaving issue, any of whom shall be living at the respective times of vesting aforesaid, such issue then living shall take, and equally amongst them if more than one, the share which their respective parents would have taken if then living." After the death of the widow the trustees were to hold certain portions of his real estate in trust for four children named and their issue, and a further portion in trust for C., the only child of his fifth child already dead at the date of the will, during her life for her separate use and without power of anticipation. After her death, such portion was to fall into residue. The trustees, on the death of the widow, were to realise the residue of his estate and to hold it in trust for his children in equal shares, provided that "if any child of mine shall die in my lifetime and any issue of such child shall be living at my decease, then the shares as well accruing as original to which the child so dying would if living at my decease have been entitled . . . shall be held . . . upon such trusts . . . as if such child had died immediately after my decease."

HELD—that notwithstanding the use of the phrase "shall die in my lifetime," it was clear that the testator did not intend to leave C. unprovided for, and that on the widow's death his estate was divisible into fifths, of which C. took one.

BARRACLOUGH v. COOPER, [1908] 2 Ch. 121 (n); [77 L. J. Ch. 555 (n); 98 L. T. 852 (n)]—H. L.

**49. Words of Futurity—Gift to Children Attaining Twenty-one—Gift to Children of Child who "shall Die" in Testator's Lifetime—Child Dead at Date of Will—His Child not included—Similar Gift to Husband or Wife of Child.]—**C. left his residuary estate in trust (subject to a life estate for his wife, who died before him) for all his children who attained twenty-one in equal shares, "provided that if any child of mine shall die in my lifetime leaving a child or children who shall survive me and being a son or sons shall attain twenty-one or being a daughter or daughters shall attain that age or marry under it, then and in every such case the last-mentioned child or children shall take (and if more than one equally between them) the share which his, her or their parent would have taken . . . if such parent or parents had survived me (subject nevertheless to the proviso hereinafter contained): Provided always that if any child of mine shall die in the lifetime of my wife leaving a husband or wife who shall survive her, then on the death of my wife the income of the share of any deceased child of mine shall go and be payable to such husband or wife of such deceased child of mine."

HELD—not to include the child or husband or wife of a child of C. dead at the date of the will.

IN RE COPE, CROSS v. CROSS, [1908] 2 Ch. 1; [77 L. J. Ch. 558; 99 L. T. 374—C. A.]

**50. Words of Futurity—Gift to Nephews and Nieces—Gift to Children of such if any "shall Die" in Lifetime of Testator—Nephew Dead at Date of Will—Inclusion of his Child.]—**L. left the residue of her estate in trust for "all my nephews and nieces who shall be living at my death . . . equally. Provided always that if any nephew or niece shall die in my lifetime leaving a child or children who shall survive me, and being a son or sons shall attain the age of twenty-one, or being a daughter or daughters shall attain that age or marry under it, then and in every such the last-mentioned child or children shall take (equally between them if more than one) the share which his, her or their parent would have taken . . . if such persons had survived me."

One nephew had died before the date of the will leaving a child who survived L. and attained twenty-one.

HELD—that the child was entitled to a share.

*Loring v. Thomas* ((1861), 1 Dr. & Sm. 497—Kindersley, V.-C.) and *Barraclough v. Cooper* (*supra*) followed.

*Gorringe v. Mahlstedt* ([1907] A. C. 225; 76 L. J. Ch. 527; 97 L. T. 111—H. L.) distinguished. IN RE LAMBERT, CORNS v. HARRISON, [1908] 2 [Ch. 117; 77 L. J. Ch. 553; 98 L. T. 851—Eve, J.]

**XV. LAPSE.**

See No. 11, *supra*.

**XVI. ABSOLUTE GIFT.**

**51. Beneficial Interest or Trust—Gift to Husband—"To be applied" for Children.]—**A. left

**Absolute Gift—Continued.**

all her property to "her dearly loved husband" (her executor), "to be applied by him to the maintenance and education of her children."

HELD—that he took the property as a trustee and not beneficially.

IN RE DELAHUNTY, [1907] 1 I. R. 507—C. A.

**52. *Bequest for Education of a Child—Gift over in Event of Death—Use of Capital or Income only.***—A. bequeathed £250 to H. "for her education; should she die under age, to be given to her sister."

HELD—that, in spite of the gift over, so far as the money was properly required for her education, H. was during her minority entitled to the capital and not only the income.

IN RE BLACK, FALLS v. ALFORD, [1907] 1 I. R. 486—C. A.

**53. *Life Estate with Remainder or Joint Tenancy.***—A testator bequeathed his property to his wife "to be held by her for her own use and for the use of any children which have sprung or may spring from our marriage. She has a right to divide the above possessions among her offspring which may be descendants of mine."

HELD—that the wife took an estate for life, with a power of appointment among children and remoter descendants.

BRADSHAW v. BRADSHAW, [1908] 1 I. R. 288—[Barton, J.]

**54. *Restrictions as to Enjoyment—Legacies to Daughters—Gift over to Survivors upon Death Unmarried—Unmarried Daughter Survivor.***—A testator bequeathed to each of his three daughters £1,000 to be paid at their mother's death, provided they should have been previously married with the consent of his executors, and directed that if a daughter should not have been previously married, or, if married, had been married without such consent, she was only to receive the income of the £1,000 during her life, or until marriage with the consent of his surviving executor, and that if she married without such consent and died leaving issue, the £1,000 was to be divided between her children equally, and in case any daughter should die without being married with such consent and without leaving issue, the principal left to the daughter so dying should go to her surviving brothers and sisters equally. One daughter survived her brothers and sisters and died unmarried.

HELD—that there was an absolute gift to each daughter in the first instance, coupled with restrictions on the enjoyment of it in certain events which did not happen; and that the last surviving daughter was absolutely entitled at her death to the legacy.

FITZ-GIBBON v. McNEILL, [1908] 1 I. R. 1—M. R.

**XVII. CONDITIONS.****(a) Condition Precedent or Subsequent.**

[No paragraphs in this vol. of the Digest.]

**(b) Contingent Gift.**

[No paragraphs in this vol. of the Digest.]

**(c) Forfeiture.**

[No paragraphs in this vol. of the Digest.]

**(d) Heirlooms.**

[No paragraphs in this vol. of the Digest.]

**(e) Name and Arms Clauses.**

[No paragraphs in this vol. of the Digest.]

**(f) Restraint of Marriage.**

[No paragraphs in this vol. of the Digest.]

**(g) General.**

**55. *Condition Void—Public Policy—Entering Naval or Military Service.***—A condition in a will by which a beneficiary is to forfeit his interest by entering the naval or military service of the Crown is void as being against public policy.

IN RE BEARD, BEARD v. HALL; REVERSIONARY [AND GENERAL SECURITIES CO., LD. v. HALL, [1908] 1 Ch. 383; 77 L. J. Ch. 265; 98 L. T. 315; 24 T. L. R. 225—Eady, J.]

**56. *Condition Void—Unconditional—Gift to be Applied According to Memorandum—Memorandum not Admitted to Probate—Gift Unconditional.***—A testator gave a legacy of £10,000 to the University of Wales for the purpose of founding scholarships and prizes therein upon the terms contained in any memorandum amongst his papers written or signed by him, and he gave a bequest of £10,000 to the University College of North Wales upon the same terms. A memorandum was found amongst his papers, but the Court refused to admit the memorandum to probate.

HELD—that the legacies were payable unaccompanied by any restriction.

IN RE WILLIAMS, TAYLOR v. UNIVERSITY OF [WALES, 24 T. L. R. 716—Eady, J.]

**XVIII. VESTING.**

[No paragraphs in this vol. of the Digest.]

**XIX. DIVESTING.**

[No paragraphs in this vol. of the Digest.]

**XX. PERPETUITIES AND REMOTENESS.**

**57. *Gift of Income Only—Voluntary Association.***—A gift of the income arising from a testator's personal estate to a voluntary association—the Penzance Library—was held to be void as creating a perpetuity, the gift being upon its true construction a gift of income only and not *corpus*.

IN RE SWAIN, PHILLIPS v. SWAIN, 99 L. T. 605; 24 T. L. R. 882; [1908] W. N. 209—Joyce, J.]

**XXI. CREATION OF ESTATE TAIL.**

[No paragraphs in this vol. of the Digest.]

**XXII. DIRECTIONS TO TRUSTEES.****(a) Investment Clause.**

[No paragraphs in this vol. of the Digest.]

**(b) Maintenance.**

[No paragraphs in this vol. of the Digest.]

## Directions to Trustees—Continued.

## (c) Miscellaneous.

[No paragraphs in this vol. of the Digest.]

## (d) Precatory Trusts.

[No paragraphs in this vol. of the Digest.]

## XXIII. CONVERSION.

## (a) Leaseholds.

[No paragraphs in this vol. of the Digest.]

## (b) Power of Postponement.

58. "*Property not Actually Producing Income*"—*Mortgage—Payment of Interest to be Deferred.*—L. by his will gave all his estate to trustees on trust for sale and conversion, his wife to receive the income for her life. There was no power to postpone conversion, and he directed that no property not actually producing income should be treated as producing income or entitling any person to the receipt of income. He died in 1901. A mortgage held by him recited that the mortgagor owed a certain sum and that it had been agreed that payment should be postponed, and the mortgagor covenanted to pay the debt with simple interest at his death, and if the aggregate was not then paid, to pay interest on such aggregate by equal half-yearly payments.

The mortgagor died in 1906 and the testator's widow, the life tenant, died directly after.

HELD—that the interest attributable to the period between the testator's death and the mortgagor's death belonged to the estate of the widow and not to that of the testator.

*In re Hubback* ([1896] 1 Ch. 754; 65 L. J. Ch. 271; 73 L. T. 738; 44 W. R. 289—C. A.) applied.

IN RE LEWIS, DAVIS *v.* HARRISON, [1907] 2 [Ch. 296; 76 L. J. Ch. 539; 97 L. T. 637—Warrington, J.]

59. *Settlement of Real and Personal Property—Trust for Sale and Conversion—Postponement of Sale of Realty—Interim Rents.*—Where a will settles real and personal estate upon trust for sale and conversion, the income to be paid to a life tenant, and subsequently the capital to be divided, so long as the sale of the realty is withheld any impropriety postponed the life tenant is entitled to receive the whole net rents and profits.

*In re Searle* ([1900] 2 Ch. 829; 69 L. J. Ch. 712; 83 L. T. 364; 49 W. R. 44—Kekewich, J.) and *In re Earl of Darnley* ([1907] 1 Ch. 159; 76 L. J. Ch. 58; 95 L. T. 706; 23 T. L. R. 93—Kekewich, J.) followed.

*Genery v. Fitzgerald* ((1822), Jac. 468); *Bellairs v. Bellairs* ((1874), L. R. 18 Eq. 510; 43 L. J. Ch. 669; 22 W. R. 942); and *dictum* of Lord Macnaghten in *Wentworth v. Wentworth* ([1900] A. C. 163; 69 L. J. P. C. 13; 81 L. T. 682—P. C.) considered and explained.

IN RE OLIVER, WILSON *v.* OLIVER, [1908] 2 [Ch. 74; 77 L. J. Ch. 547; 99 L. T. 241—Warrington, J.]

## (c) Tenant for Life and Remainderman.

See No. 59, *supra*; and title CONVERSION.

## XXIV. PAYMENT OF DEBTS AND LEGACIES.

## (a) Abatement.

60. *Specific and Demonstrative Legacies—Abatement of.*—In the event of assets not specifically bequeathed being insufficient to pay debts, specific and demonstrative legacies abate rateably.

IN RE TURNER, ARMSTRONG *v.* GAMBLE, [1908] [1 I. R. 274—M. R.]

## (b) Apportionment.

61. *Direction to Pay Legacies out of a Mixed Fund—To be Paid Rateably—Testamentary Expenses—Estate Duty on Portion Attributable to Realty—Finance Act, 1894* (57 & 58 Vict. c. 30), s. 6 (2), s. 8 (3) (4).—A testator directed his trustees to sell and convert his residuary real and personal estate, and to pay out of the proceeds his funeral and testamentary expenses and debts and legacies bequeathed by the will.

HELD—that such a direction to pay legacies out of a mixed fund of residue charged them rateably on the portions representing realty and personally.

*Roberts v. Walker* ((1830), 1 Russ. & My. 752) applied.

And that, notwithstanding the direction as to payment of testamentary expenses, the portion of the legacies attributable to realty must bear the estate duty payable in respect of them.

*In re Trenchard* ([1905] 1 Ch. 82; 74 L. J. Ch. 135; 92 L. T. 265; 53 W. R. 235—Warrington, J.) distinguished.

*Smith v. Claxton* ((1820), 4 Madd. 484) and *Berry v. Gaukroger* ([1903] 2 Ch. 116; 72 L. J. Ch. 435; 88 L. T. 521; 51 W. R. 449; 19 T. L. R. 445—C. A.) applied.

IN RE SPENCER COOPER, POE *v.* SPENCER [COOPER, [1908] 1 Ch. 130; 77 L. J. Ch. 64; 98 L. T. 344—Eady, J.]

## (c) Charge on Real Estate.

62. *Charge of Debts and Legacies—Implied Power to Sell or Mortgage—Beneficial Devise in Fee to One Executor—Mortgage by him to Raise Legacies—Liability of Mortgagee to See to Application of Money.*—If land is devised in fee beneficially to one of several executors, subject to a general charge of debts and legacies, he can sell or mortgage it and give a good receipt for the purchase money. He need not expressly purport to sell or mortgage in his capacity of executor; and, even if the money is expressed to be required for payment of legacies, the purchaser or mortgagee is not bound to see to its application.

*In re Rebbeck* ((1894), 42 W. R. 473) distinguished.

*Johnson v. Kennett* ((1835), 3 My. & K. 624, 630); *Forbes v. Peacock* ((1846), 1 Ph. 717, 721); *Stroughill v. Anstey* ((1852), 1 D. M. & G. 635); *Corser v. Cartwright* ((1875), L. R. 7 H. L. 731,



**Payment of Debts and Legacies—Continued.**

736); and *In re Venn and Furse's Contract* ([1894] 2 Ch. 101; 63 L. J. Ch. 303; 70 L. T. 312; 42 W. R. 440 (Stirling, J.) applied.

*IN RE HENSON, CHESTER v. HENSON*, [1908] 2 [Ch. 356; 77 L. J. Ch. 598; 99 L. T. 336—Eady, J.

**63. Mortgage by Executor being also Residuary Legatee—Charge on Property for Legacy to Another—Rights of Legatee.**—A testator, who died in 1885, by his will left all his property to his four sons by his first wife, subject to a charge for a legacy in favour of his four sons by his second wife. The legacy remained unpaid. The four elder sons in 1890 deposited the title deeds of part of the property with a bank as security for an advance, and, in 1899, they executed a formal mortgage of the property to the bank. The bank, if they had made an investigation of title, would have obtained cognisance of the will which created the charge. The mortgagors practised no concealment.

**HELD**—that, as the four younger sons were legatees and not merely creditors, and as the bank had constructive notice of the charge, the claim of the four younger sons must prevail over the mortgage of the bank.

*Graham v. Drummond* ([1896] 1 Ch. 968; 65 L. J. Ch. 472; 74 L. T. 417; 44 W. R. 596; 12 T. L. R. 319—Romer, J.) distinguished.

*THE BANK OF BOMBAY AND ANOTHER v. [SULEMAN SOMJI AND OTHERS]*, 24 T. L. R. 840; 52 Sol. Jo. 727—P. C.

**(d) Exoneration of Mortgaged Property.**

**64. Executors Paying off Debt—Gift of Part of Mortgaged Property inter vivos—Liability of Donee to Contribute towards Paying off Debt—Paramount Charge—No Covenants for Title.**—D. to secure an overdraft deposited with his bank the deeds of his leasehold premises and other securities, executing a deed of charge and memorandum of deposit. He subsequently assigned the leasehold premises to his wife by a voluntary deed containing no reference to the charge or memorandum, and no covenants for title, express or implied.

By his will he left all his property in trust for his wife and children. His executors thereupon paid off the bank's debt, and asked the widow, as assignee of the leaseholds, to contribute.

**HELD**—that she was under no liability to do so, the charge being one created by her assignor and not one paramount to his own title.

*Ker v. Ker* ((1869), 1 R. 4 Eq. 15) explained and distinguished.

*In re Jones* ([1893] 2 Ch. 461; 62 L. J. Ch. 996; 69 L. T. 45—North, J.) distinguished.

*IN RE DARBY, RENDALL v. DARBY*, [1907] 2 Ch. [465; 76 L. J. Ch. 689; 97 L. T. 900—Warrington, J.

**65. Option to Purchase Given to Son—Right to Conveyance Free from Incumbrances—Real Estate Charges Act, 1854 (17 & 18 Vict. c. 113),**

s. 1.]—W. gave his estate to trustees on trust to sell and convert, but directed them to allow his son the option of buying two of his houses for £450. The son claimed to buy at that price. There was a mortgage for £300 on the houses.

**HELD**—that the son, not being an "heir or devisee" was entitled to a conveyance of the houses free from incumbrances.

*Given v. Massey* ((1892), 31 L. R. I. 126) followed.

*IN RE WILSON, WILSON v. WILSON*, [1908] 1 [Ch. 839; 77 L. J. Ch. 564; 98 L. T. 828—Warrington, J.

**(e) Interest on Legacies.**

**66. Legacies—General or Specific—Gift of Debenture Stock "in" Certain Railways.**—A gift of "2,000 four per cent. debenture stock in the Argentine Great Western Railway" is a general and not a specific legacy where there is nothing in the context to prevent such a construction, and therefore it does not carry interest from the death of the testator.

*RE CURRY, CURRY v. CURRY*, 53 Sol. Jo. 117—[Eve, J.

**67. Legacy to Daughter-in-Law—Obligation to Maintain her Children.**—A legacy to an adult person, subject to an obligation to maintain infant children, does not carry interest from the testator's death.

*Raven v. Waite* ((1818), 1 Swans. 553, 559) followed.

*Pett v. Fellows* ((1733), 1 Swans. 561 (n)); and *Leslie v. Leslie* ((1835), 11. & G. t. Sugden, 1) distinguished.

*IN RE CRANE, ADAMS v. CRANE*, [1908] 1 Ch. [379; 77 L. J. Ch. 212; 98 L. T. 314—Eady, J.

**XXV. SURVIVORSHIP.**

[No paragraphs in this vol. of the Digest.]

**XXVI. EXERCISE OF POWER OF APPOINTMENT.**

*See POWERS.*

**XXVII. ANNUITIES.**

**68. Gift to a Class—Joint Tenancy or Tenancy in Common—Whether Annuity Perpetual or Not.**—*Primâ facie* an annuity is not perpetual but lasts only during the life-time of the grantee.

*Primâ facie* an annuity given to several is a gift of separate annuities for aliquot shares.

E. bequeathed leaseholds (56 years unexpired) on trust to pay out of the annual proceeds the yearly sum of £50 unto and equally between certain persons, and subject thereto in trust for A., with a gift over in case he died before twenty-one.

**HELD**—(1) that the annuity was not perpetual; and

(2) that on the death of one annuitant his share did not become payable to the others.

*Blight v. Hartnoll* ((1881), 19 Ch. D. 294; 51 L. J. Ch. 162; 45 L. T. 524—dictum of Fry, J.); and *Mansergh v. Campbell* ((1858), 28 L. J. Ch.

**Annuities—Continued.**

61 : 3 De G. & J. 232—(dictum of Lord Chelmsford) followed.

RE EVANS, THOMAS *v.* THOMAS, 77 L. J. Ch. [583 ; 99 L. T. 271—Parker, J.

**XXVIII. CHARITABLE BEQUESTS.**

*See* CHARITIES.

**XXIX. CONDITIONAL WILLS.**

[No paragraphs in this vol. of the Digest.]

**XXX. MUTUAL WILLS.**

[No paragraphs in this vol. of the Digest.]

**XXXI. CONFLICT OF LAWS.**

*See* No. 4, *supra*; and CONFLICT OF LAWS.

**XXXII. MISCELLANEOUS.**

**69. Contingent Remainder—Executory Devise—Intention of Testator—Life Estate and Remainder—Limitation in Default of Issue.**—When once the limitations created by a will have, as a matter of construction, been ascertained, it is a question of law, and not of intention, whether any particular limitation is a contingent remainder or an executory devise.

A testator by his will in 1846 devised his real estate to the use of his nephew, J. B., for life, and after his death to the use of the first and every other son of the body of J. B., severally and successively, in tail male, and in default of such issue to the use of the eldest or other son of the body of the testator's nephew, J. S., who should first attain or have attained the age of twenty-one years, severally and successively, in tail male, and in default of such issue to the use of F. S., daughter of J. S., for her life, and after her death to the use of the first and every other son of the body of F. S., severally and successively, in tail male. J. B. entered into possession of the estates on the testator's death and died without issue. J. S. had a son who was then eleven years old, and his father took possession for him until his son attained twenty-one, when the son took possession and retained it till his death, when his son, the defendant, took possession. Upon the death of F. S., the plaintiff, her son, claimed the estates upon the ground that the limitation in favour of the defendant's father was a contingent remainder which had failed by the death of J. B. before the defendant's father had attained twenty-one years of age.

**HELD**—that the limitation in favour of the defendant's father was a contingent remainder and not an executory devise, and that it failed by reason of the father not having attained the age of twenty-one years when the preceding life estate of J. B. determined; and that the estate limited to F. S. was a vested remainder, and upon failure of the contingent remainder to the defendant's father she became entitled in possession, and that the plaintiff was therefore entitled as tenant in tail male.

*In re Wrightson* ([1904] 2 Ch. 95 ; 73 L. J. Ch. 742 ; 90 L. T. 748—C. A.) explained.

WHITE *v.* SUMMERS, [1908] 2 Ch. 256 ; 77 [L. J. Ch. 596 ; 98 L. T. 845 ; 24 T. R. 552—Parker, J.

**WINDING-UP.**

*See* BUILDING SOCIETIES : COMPANIES.

**WINDOWS.**

*See* EASEMENT.

**WITNESSES.**

*See* EVIDENCE.

**WOMEN, EMPLOYMENT OF.**

*See* FACTORIES AND WORKSHOPS.

**WORDS.**

"Absolutely entitled."

*See* COMPULSORY PURCHASE, No. 7.

"Accident."

*See* MASTER AND SERVANT, Nos. 1 to 5.

"Account current."

*See* MONEY, No. 10.

"Acting executor."

*See* TRUSTS AND TRUSTEES, No. 5.

"Acting under the authority of the company."

*See* BILLS OF EXCHANGE, No. 2.

"Action of tort."

*See* COUNTY COURTS, No. 2.

"Actual cost."

*See* ELECTRIC LIGHTING, No. 1.

"Agent."

*See* CRIMINAL LAW, No. 22a.

"Aground in or near a fairway."

*See* SHIPPING, No. 46.

"All transporting to be at owner's risk."

*See* SHIPPING, No. 78.

"Angling."

*See* FISHERIES, No. 1.

"As fast as steamers can deliver."

*See* SHIPPING, No. 32.

"As long as we do business."

*See* AGENCY, No. 2.

**Words—Continued.****"At anchor."***See SHIPPING, No. 46.***"Author."***See COPYRIGHT, No. 2.***"Average weekly earnings."***See MASTER AND SERVANT, Nos. 9 to 13.***"Belonging to."***See WILLS, No. 21.***"Books."***See WILLS, No. 20.***"Bridge."***See HIGHWAYS, No. 22.***"Building or structure."***See METROPOLIS, No. 5.***"Business of a draper."***See LANDLORD AND TENANT, No. 9.***"By or in consequence of whose order."***See HIGHWAYS, No. 13.***"Carriages."***See WILLS, No. 23.***"Carrying on business."***See MASTER AND SERVANT, No. 48.***"Cash at banker's."***See WILLS, No. 22.***"Cause to be represented."***See COPYRIGHT, No. 2.***"Child or children."***See SETTLEMENTS, No. 1.***"Circumstances creating a legal liability."***See MASTER AND SERVANT, No. 7.***"Completion of the purchase."***See REVENUE, No. 6.***"Conspicuous part."***See HIGHWAYS, No. 31.***"Containing any charge."***See COMPANY, No. 13.***"Continuance of injury or damage."***See PUBLIC AUTHORITIES, No. 7.***"Contraband of war."***See INSURANCE, No. 24.***"Contract of service."***See MASTER AND SERVANT, Nos. 49, 57.***"Contributor."***See PRESS, No. 3.***"Conveyance on sale."***See REVENUE, Nos. 5, 6, 7, 8.***"Course authorised or required by Rules."***See SHIPPING, No. 49.***"Cousins."***See WILLS, No. 24.***"Criminal cause or matter."***See DISTRESS, No. 2.***"Criminal cause or matter."***See PRACTICE AND PROCEDURE, No. 27.***"Damage to property of any description."***See CONTRACT, No. 7.***"Debentures."***See REVENUE, No. 11.***"Debentures."***See WILL, No. 25.***"Debt or liquidated demand."***See PRACTICE AND PROCEDURE, No. 5.***"Debts."***See DEATH DUTIES, No. 7.***"Debts or other liabilities."***See HUSBAND AND WIFE, No. 14.***"Dependants."***See MASTER AND SERVANT, Nos. 16 to 20.***"Deposited expressly for safe custody."***See INNKEEPER, No. 2.***"Devisee."***See MORTGAGE, No. 8.***"Direct or proximate cause of death."***See INSURANCE, No. 1.***"Document."***See EVIDENCE, No. 2.***"Dramatic piece."***See COPYRIGHT, No. 2.***"Duly paid."***See SALE OF LAND, No. 4.***"Dying seised."***See COPYHOLD, No. 2.***"Editor."***See PRESS, No. 3.***"Employment."***See EDUCATION, No. 6.***"Employment of a casual nature."***See MASTER AND SERVANT, Nos. 48, 50 to 53.*



**Words—Continued.****"Engaged in discharging."***See SHIPPING, No. 81.***"Entire satisfaction."***See CONTRACT, No. 4.***"Equitable charge."***See DEATH DUTIES, No. 3.***"Erection of new building."***See LOCAL GOVERNMENT, No. 16.***"Error in judgment."***See SHIPPING, No. 12.***"Escrow."***See POWERS, No. 9.***"Evidence, repute or otherwise."***See ELECTIONS, No. 8.***"Express Reference."***See POWERS, Nos. 2, 3.***"Expressly forbidden."***See TRUSTS AND TRUSTEES, No. 12.***"Expressly purport to exercise."***See POWERS, No. 4.***"Execution of works."***See CONTRACT, No. 7.***"Factory."***See MASTER AND SERVANT, No. 23.***"Fault or privity."***See SHIPPING, No. 66.***"Fees other than for services rendered."***See BURIAL, No. 1.***"Fictitious person."***See BANKERS AND BANKING, No. 3.***"Final order."***See MAGISTRATES, Nos. 13, 18 ; PRACTICE AND PROCEDURE, Nos. 41, 42.***"Finding all items of transportation."***See SHIPPING, No. 78.***"Fine or sum of money in the nature of a fine."***See LANDLORD AND TENANT, Nos. 17, 18.***"Full consideration in money or money's worth."***See DEATH DUTIES, No. 8.***"General benevolent objects or purposes."***See CHARITY, No. 5.***"Goods of a different description."***See SALE OF GOODS, No. 7.***"Hands striking work."***See SHIPPING, No. 17.***"Harsh and unconscionable."***See MONEY AND MONEY-LENDERS, Nos. 6, 7, 8.***"House and its contents."***See WILLS, No. 26.***"Household furniture and effects."***See WILLS, No. 27.***"Immediately."***See SALE OF LAND, No. 3.***"Inaccessible on account of ice."***See SHIPPING, No. 12.***"Incumbrance incurred or created bona fide."***See DEATH DUTIES, No. 8.***"Insured against all risks."***See INSURANCE, No. 14.***"Intended execution."***See PUBLIC AUTHORITIES, No. 5.***"Intestate."***See DESCENT, No. 2.***"Junction of paving."***See TRAMWAYS, No. 4.***"Land."***See SEWERS AND DRAINS, No. 5.***"Land covered with water."***See RATES AND RATING, No. 3.***"Land used only as railway."***See RATES AND RATING, No. 2.***"Lead poisoning or its sequelæ."***See MASTER AND SERVANT, No. 2.***"Limits of port."***See SHIPPING, No. 82.***"Loss or damage."***See DEPENDENCIES AND COLONIES, No. 7.***"Margarine."***See FOOD AND DRUGS, No. 18.***"Mercantile agent."***See AGENCY, No. 1.***"Metes, bounds and admeasurements."***See HIGHWAYS, No. 7.***"Metropolitan police court."***See CHARITY, No. 7.***"Minor or surgical operation."***See MEDICINE, No. 1.*

**Words—Continued.**

- "Money": "Money deposited at savings bank."**  
*See WILLS, Nos. 29, 30.*
- "Mortgage or charge created by company."**  
*See COMPANY, No. 11.*
- "Necessary or proper party."**  
*See ADMIRALTY, No. 1.*
- "Necessaries."**  
*See INFANTS, No. 2.*
- "Not under command."**  
*See SHIPPING, No. 50.*
- "Obstruction."**  
*See SHIPPING, No. 16.*
- "Of what kind soever."**  
*See SHIPPING, No. 15.*
- "On, in or about."**  
*See MASTER AND SERVANT, No. 22.*
- "On station on pilotage duty."**  
*See SHIPPING, No. 56.*
- "Open and notorious evil liver."**  
*See ECCLESIASTICAL LAW, No. 1.*
- "Other reasonable expenses."**  
*See LUNATICS, No. 7.*
- "Out of and in the course of."**  
*See MASTER AND SERVANT, Nos. 24 to 36.*
- "Outstanding interest."**  
*See COMPULSORY PURCHASE, No. 4.*
- "Owners."**  
*See ADMIRALTY, No. 2.*
- "Paid to and received by."**  
*See COMPANY, Nos. 42, 43.*
- "Particular building contract."**  
*See HIGHWAYS, No. 16.*
- "Person deeming himself aggrieved."**  
*See MAGISTRATES, No. 9.*
- "Person for the time being entitled to the equity of redemption."**  
*See MORTGAGE, No. 7.*
- "Person interested."**  
*See DEPENDENCIES AND COLONIES, No. 11.*
- "Pictures."**  
*See WILLS, No. 32.*  
 Y.D.

**"Port charges."**

*See SHIPPING, No. 23.*

**"Port or ports, place or places."**

*See INSURANCE, No. 15.*

**"Portions of bulk cargo."**

*See INSURANCE, No. 17.*

**"Practising as an apothecary."**

*See MEDICINE, No. 1.*

**"Premium bonds."**

*See COMPANY, No. 47.*

**"Principal mansion house."**

*See SETTLEMENTS, No. 16.*

**"Proceeding in the action."**

*See PRACTICE AND PROCEDURE, No. 11.*

**"Proceedings."**

*See MASTER AND SERVANT, No. 7.*

**"Professional misconduct."**

*See PARTNERSHIP, No. 1.*

**"Profits accruing by reason of an office."**

*See INCOME TAX, No. 1.*

**"Promissory note."**

*See REVENUE, No. 11.*

**"Property in possession or expectancy."**

*See SETTLEMENTS, No. 10.*

**"Public highways."**

*See HIGHWAYS, No. 24.*

**"Purchaser."**

*See BANKRUPTCY, No. 35.*

**"Purposes of the employer's trade or business."**

*See MASTER AND SERVANT, No. 57.*

**"Putative marriages."**

*See HUSBAND AND WIFE, No. 8.*

**"Reasonable excuse."**

*See PAWNBROKERS, No. 1.*

**"Reasonable remuneration."**

*See LUNATICS, No. 7.*

**"Recently taken."**

*See ANIMALS, No. 8.*

**"Recover compensation."**

*See MASTER AND SERVANT, No. 7.*

**"Regular Employment."**

*See MASTER AND SERVANT, No. 68.*

**"Reported at Custom House."**

*See SHIPPING, No. 39.*

**Words—Continued.****"Reserving rights."***See SOLICITOR, No. 14.***"Rest of my investments."***See WILLS, No. 33.***"Risk of collision."***See SHIPPING, Nos. 52, 53.***"Serious and wilful misconduct."***See MASTER AND SERVANT, Nos. 43, 44.***"Share in the profits or gross earnings."***See MASTER AND SERVANT, No. 56.***"Ship."***See MASTER AND SERVANT, No. 23.***"Ship's papers."***See DISCOVERY, No. 6.***"Sign."***See LOCAL GOVERNMENT, No. 17.***"Site."***See WILLS, No. 34.***"Special circumstances."***See SOLICITOR, Nos. 13, 14.***"Specially qualified to practise dentistry."***See MEDICINE, No. 2.***"Step in proceedings."***See ARBITRATION, No. 4.***"Substantial completion of a year's service."***See COMPANY, No. 18.***"Such as are sold or delivered."***See INTOXICATING LIQUORS, No. 12.***"Tenant for life."***See SETTLEMENT, No. 18.***"Tools and implements of trade."***See DISTRESS, Nos. 5, 6.***"Trade dispute."***See TRADE AND TRADE UNIONS, No. 10.***"Transfer to new management."***See INSURANCE, No. 19.***"Two independent brakes."***See STREET TRAFFIC, No. 12.***"Walking inspector."***See LOCAL GOVERNMENT, No. 9.***"Warranted free from capture."***See INSURANCE, No. 25.***"Weather working days."***See SHIPPING, No. 21.***"When fishing."***See SHIPPING, No. 55.***"When under way."***See SHIPPING, No. 55.***"Wholly dependent."***See MASTER AND SERVANT, No. 21.***"Wholly for the deceased's own use and benefit."***See DEATH DUTIES, No. 8.***"Widow," "Widowhood."***See WILLS, Nos. 35, 36.***"Wife."***See WILLS, No. 35.***"Wilful disobedience to lawful command."***See SHIPPING, No. 9.***"Work extending over a long period."***See HIGHWAYS, No. 16.***"Work undertaken by the principal."***See MASTER AND SERVANT, No. 46.***"Workman."***See MASTER AND SERVANT, No. 62.***"Writing under hand."***See FRIENDLY SOCIETIES, No. 2.***WORK AND LABOUR.***See FACTORIES AND WORKSHOPS.***WORKING CLASSES,  
HOUSES OF.***See PUBLIC HEALTH.***WORKMEN.***See MASTER AND SERVANT.***WORKSHOPS.***See FACTORIES AND WORKSHOPS.***WRECK.***See ADMIRALTY; SHIPPING AND NAVIGATION.***YACHTS.***See SHIPPING AND NAVIGATION.***YEAR.***See TIME.***ZANZIBAR.***See DEPENDENCIES AND COLONIES.*



# ALPHABETICAL LIST OF CASES AFFIRMED, REVERSED, OVERRULED, FOLLOWED, OR CONSIDERED, IN THE CASES DIGESTED IN THIS VOLUME.

(With Contemporaneous References.)

A.	COL.	Ann, In re; Wilson v. Ann ([1894] 1 Ch. 549; 63 L. J. Ch. 334; 70 L. T. 273—Kekewich, J.) overruled.	COL.
<b>Ackerman, In re</b> ([1891] 3 Ch. 212; 61 L. J. Ch. 34; 65 L. T. 194; 40 W. R. 12—Kekewich, J.) distinguished.		<i>Re Fieldwick, Johnson v. Adamson</i> . . . 279	
<i>In re Abrahams, Abrahams v. Abrahams</i> . . . . .	223	<b>Annaly (Lady), In re</b> ((1904) 92 L. T. 13) followed.	
<b>Adams v. Marylebone Borough Council</b> ([1906] 2 K. B. 767; 75 L. J. K. B. 995; 70 J. P. 545; 95 L. T. 540; 22 T. L. R. 820—Div. Ct.) affirmed . . .	413	<i>Tremayne v. Rashleigh</i> . . . . .	558
<b>Addy v. Blake</b> ((1887) 19 Q. B. D. 478; 51 J. P. 599; 56 L. T. 711; 35 W. R. 719; 16 Cox, C. C. 259) distinguished.		<b>Anselm, The</b> ((1906) 10 Asp. M. C. 257—Deane, J.) reversed . . . . .	592
<i>Pennington v. Pincock</i> . . . . .	323	<b>Anstey v. British Natural Premium Life Association, Ltd.</b> ((1908) 99 L. T. 16; 24 T. L. R. 594—Bray, J.) affirmed . . . . .	311
<b>Agincourt Steamship Co. v. Eastern Extension, Australasia, and China Telegraph Co. and Great Northern Telegraph Co.</b> ((1907) 97 L. T. 410; 23 T. L. R. 330; 12 Com. Cas. 166—Bray, J.) varied . . . . .	629	<b>Applegarth v. Colley</b> ((1842) 10 M. & W. 723) distinguished.	
<b>Alven v. Bond</b> ((1841) Falc. & K. 196, 213, 214) applied.		<i>Saxby v. Fulton</i> . . . . .	249
<i>Nugent v. Nugent</i> . . . . .	527	<b>Apthorp v. Peter Schoenfen Brewery Co.</b> ((1899) 15 T. L. R. 245; 4 Tax Cases 14) distinguished.	
<b>Anderson v. Marten</b> ([1908] 1 K. B. 601; 77 L. J. K. B. 569; 98 L. T. 146; 24 T. L. R. 208; 13 Com. Cas. 205; 10 Asp. M. C. 605—C. A.) affirmed . . . . .	318, 319	<i>Gramophone and Typewriters, Ltd. v. Stanley</i> . . . . .	297
<b>Andrew v. Bridgman</b> ([1907] 2 K. B. 494; 76 L. J. K. B. 879; 97 L. T. 432; 23 T. L. R. 548—Channell, J.) affirmed . . . . .	341	<b>Armitage v. Lancashire and Yorkshire Ry. Co.</b> ([1902] 2 K. B. 178; 71 L. J. K. B. 778; 66 J. P. 613; 86 L. T. 883; 18 T. L. R. 648—C. A.) followed.	
<b>Andrews v. Gas Meter Co.</b> ([1897] 1 Ch. 361; 66 L. J. Ch. 246; 45 W. R. 321—C. A.) approved.		<i>Fitzgerald v. W. G. Clark &amp; Son</i> . . . . .	391
<i>Line v. Cuts</i> . . . . .	86	<b>Assheton-Smith v. Owen</b> ([1906] 1 Ch. 179; 75 L. J. Ch. 187; 94 L. T. 42; 22 T. L. R. 182; 10 Asp. M. C. 164—C. A.) affirmed . . . . .	606
<b>Angel v. Merchants' Marine Insurance Co.</b> ([1903] 1 K. B. 811; 72 L. J. K. B. 498; 88 L. T. 717; 51 W. R. 530; 19 T. L. R. 395; 8 Com. Cas. 179—C. A.) overruled.		<b>Atkinson, In re; Proctor &amp; Atkinson</b> ((1908) 98 L. T. 369—Joyce, J.) reversed . . . . .	434
<i>Macbeth &amp; Co., Ltd. v. Maritime Insurance Co., Ltd.</i> . . . . .	317	<b>Attorney-General v. Ashby</b> ((1907) 71 J. P. 387; 97 L. T. 479; 23 T. L. R. 498; 5 L. G. R. 1192—Joyce, J.) on appeal, settled . . . . .	563
		<b>Attorney-General v. Bouwens</b> ((1838) 4 M. & W. 171) followed.	
		<i>Winans v. R.</i> . . . . .	161

# LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
<b>Attorney-General v. Brighton Corporation</b> ((1907) 77 L. J. Ch. 6; 71 J. P. 535; 6 L. G. R. 51; 24 T. L. R. 33—Joyce, J.) affirmed . . . . .	500	<b>Baker and Another v. Snell</b> ([1903] 2 K. B. 352; 77 L. J. K. B. 726; 24 T. L. R. 599; 52 Sol. Jo. 483—Div. Ct.) affirmed . . . . .	15
<b>Attorney-General v. Fargrove Steam Navigation Co., Ltd.</b> ((1907) 23 T. L. R. 230—Bray, J.) reversed . . . . .	573	<b>Balian v. Joly, Victoria &amp; Co.</b> ((1890) 6 T. L. R. 345—C. A.) followed. <i>Joseph Thorley &amp; Sons, Ltd. v. Orchis Steamship Co., Ltd.</i> . . . . .	584
<b>Attorney-General v. Glendinning</b> ((1904) 92 L. T. 87—Phillimore, J.) followed. <i>Winans v. R.</i> . . . . .	161	<b>Bank of England v. Cutler</b> ([1907] 1 K. B. 889; 76 L. J. K. B. 504; 96 L. T. 636; 23 T. L. R. 374—Lawrence, J.) affirmed . . . . .	28, 89
<b>Attorney-General v. Great Northern Ry. Co.</b> ((1908) 72 J. P. 442—Neville, J.) reversed . . . . .	508	<b>Barraclough v. Cooper</b> ([1908] 2 Ch. 121 (n); 77 L. J. Ch. 555 (n); 98 L. T. 852 (n)—C. A.) followed. <i>In re Lambert</i> . . . . .	692
<b>Attorney-General v. London and India Docks Co.</b> ((1908) 98 L. T. 655—C. A.) affirmed . . . . .	536	<b>Barrow v. Myers</b> ((1888) 52 J. P. 345; 4 T. L. R. 411) overruled. <i>Crozier, Stephens &amp; Co. v. Auerbach</i> . . . . .	473
<b>Attorney-General v. Metcalf and Greig</b> ([1907] 2 Ch. 23; 76 L. Ch. 259; 71 J. P. 182; 96 L. T. 357; 23 T. L. R. 263—Kekewich, J.) reversed . . . . .	413	<b>Barry v. Butlin</b> ((1834) 2 Moore P. C. 480) applied. <i>Finney v. Gorett</i> . . . . .	675
<b>Attorney-General v. Richmond (Duke of)</b> (No. 1) ((1907) 2 K. B. 923; 77 L. J. K. B. 38; 97 L. T. 802; 23 T. L. R. 739—Bray, J.) affirmed . . . . .	164	<b>Bassett, In re; Ex parte Lewis</b> ([1896] 1 Q. B. 219; 65 L. J. Q. B. 144; 73 L. T. 736; 44 W. R. 240—Vaughan Williams, J.) applied. <i>Scott v. Peak Hill Goldfields, Ltd.</i> . . . . .	38, 39
<b>Attorney-General for Ireland v. Vandeleur</b> ([1905] 1 I. R. 509—C. A.) affirmed . . . . .	663	<b>Bates, In re</b> ((1887) 4 Morr. 192) considered. <i>In re a Debtor, Ex parte the Debtor</i> . . . . .	30
<b>Ayscough v. Bullar</b> ((1889) 41 Ch. D. 341; 58 L. J. Ch. 474; 60 L. T. 471; 137 W. R. 529—C. A.) applied. <i>Attorney-General and Others v. Pontypridd Waterworks Co.</i> . . . . .	475	<b>Baxter's Leather Co., Ltd. v. The Royal Mail Steam Packet Co.</b> ([1908] 1 K. B. 796; 77 L. J. K. B. 417; 24 T. L. R. 304—Bigham, J.) affirmed . . . . .	585
	B.	<b>Bear Island Defence Works and Doyle, In re</b> ([1903] 1 I. R. 164) doubted on one point. <i>In re Thames Tunnel (Rotherhithe and Ratcliff) Act, 1900.</i> . . . . .	96
<b>Bacon, In re</b> ((1893) 62 L. J. Ch. 445; 68 L. T. 522; 41 W. R. 478—Kekewich, J.) not followed. <i>In re Perkins</i> . . . . .	530	<b>Beckwith, Ex parte</b> ([1898] 1 Ch. 324; 67 L. J. Ch. 164; 78 L. T. 155; 46 W. R. 376; 5 Manson, 168—Wright, J.) followed. <i>In re Dover Coalfield Extension, Ltd.</i> . . . . .	76
<b>Bagot v. Chapman</b> ([1907] 2 Ch. 223; 76 L. J. Ch. 533; 23 T. L. R. 562), observations of Eady, J. doubted. <i>Howatson v. Webb</i> . . . . .	167	<b>Becquet v. MacCarthy</b> ((1831) 2 B. & Ad. 951) commented on. <i>Emanuel v. Symon</i> . . . . .	103
<b>Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co.</b> ([1902] 1 Ch. 146; 71 L. J. Ch. 158; 85 L. T. 652; 50 W. R. 177; 18 T. L. R. 161—C. A.) applied. <i>Dansk Rekykriffel Syndikat v. Snell</i> . . . . .	454	<b>Bell v. Holtby</b> ((1873), L. R. 15 Eq. 178; 42 L. J. Ch. 266—Malins, V.-C.) approved. <i>Cohen v. Bayley-Worthington</i> . . . . .	526
<b>Baggs, In re</b> ([1894] 2 Ch. 416 (n); 63 L. J. Ch. 612; 71 L. T. 138—C. A.) followed. <i>In re De Moleyns and Harris's Contract</i> . . . . .	364	<b>Bellairs v. Bellairs</b> ([1874] L. R. 18 Eq. 510; 43 L. J. Ch. 669; 22 W. R. 942) considered. <i>In re Oliver</i> . . . . .	695
<b>Bain v. Fothergill</b> ((1874) L. R. 7 H. L. 158; 43 L. J. Ex. 243; 31 L. T. 387—H. L.) applied. <i>Morgan v. Russell &amp; Co.</i> . . . . .	543	<b>Bellanoche, The</b> ([1907] P. 170; 76 L. J. P. 83—C. A.) affirmed . . . . .	593

# LIST OF CASES AFFIRMED, REVERSED, ETC.

COL.

COL.

- Benford v. Sims** ([1898] 2 Q. B. 641; 57 L. J. Q. B. 655; 47 W. R. 46; 71 L. T. 718—Div. Ct.) approved.  
*Du Cros v. Lambourne* . . . 132, 622
- Berry v. Gaukroger** ([1903] 2 Ch. 115; 72 L. J. Ch. 435; 88 L. T. 521; 51 W. R. 449; 19 R. R. 445—C. A.) applied.  
*In re Spencer Cooper, Poe v. Spencer Cooper* . . . 161, 696
- Bischoff's Trustees v. Frank** ((1903) 89 L. T. 188—Wright, J.) followed.  
*Chaplin & Co., Ltd. v. Brammall* . 114, 212
- Bisgood v. Henderson's Transvaal Estates, Ltd.** ((1908) 24 T. L. R. 413—Eve, J.) reversed . . . 83
- Bisgood v. Nile Valley Co.** ([1906] 1 Ch. 747; 75 L. J. Ch. 379; 94 L. T. 304; 54 W. R. 397; 22 T. L. R. 317; 13 Manson, 126—Kekewich, J.) approved.  
*Bisgood v. Henderson's Transvaal Estates, Ltd. and Others* . . . 83
- Black v. Williams** ([1895] 1 Ch. 408, 421; 64 L. J. Ch. 137; 43 W. R. 346; 2 Manson, 86—Vaughan Williams, J.) applied.  
*Barclay & Co., Ltd. v. Poole* . . . 571
- Blakiston v. Cooper** ([1907] 2 K. B. 688; 76 L. J. K. B. 1041; 97 L. T. 531; 23 T. L. R. 663—C. A.) affirmed . . . 295
- Blight v. Hartnoll** ((1881) 19 Ch. D. 294; 51 L. J. Ch. 162; 45 L. T. 524—*Dictum* of Fry, J.) followed.  
*Re Evans, Thomas v. Thomas* . . . 531, 699
- Bluett v. Stutchbury's, Ltd.** ((1908) 24 T. L. R. 355—Sutton, J.) reversed 78
- Blundell v. Catterall** ((1821) 5 B. & A. 268) applied.  
*Fitzhardinge (Lord) v. Purcell* . . . 665
- Board of Trade v. Baxter (The Scarsdale)** ([1906] P. 103; 75 L. J. P. 31; 54 W. R. 335; 94 L. T. 528; 22 T. L. R. 255; 10 Asp. M. C. 235—C. A.) affirmed . . . 573
- Boddington v. Woodley** ((1842) 5 Beav. 555) followed.  
*Kydd v. City of Liverpool Watch Committee* . . . 487
- Bonham v. Newcomb** ((1684) 1 Ves. 232) distinguished.  
*In re Carshalton Estate, Ltd.* . . . 434
- Bourne and Hollingsworth v. Marylebone Borough Council** ((1903) 72 J. P. 129; 24 T. L. R. 322; 6 L. G. R. 406; 52 Sol. Jo. 281—Ridley, J.) reversed . . . 356
- Brandt, Sons & Co. Ltd. v. Dunlop Rubber Co., Ltd.** ([1905] A. C. 454; 74 L. J. K. B. 898; 93 L. T. 495; 21 T. L. R. 710—H. L.) applied.  
*Shaw & Co. v. Moss's Empires, Ltd.* . 105
- Brecon Election Case** ((1871) 2 O. M. & H. 43) followed.  
*Caldicott v. Worcester Election Commissioners* . . . 206
- Brinckman v. Matley** ([1904] 2 Ch. 313; 73 L. J. Ch. 642; 68 J. P. 534; 91 L. T. 429—C. A.) applied.  
*Fitzhardinge (Lord) v. Purcell* . . . 665
- British Mutual Investment Co. v. Smart** ((1875) L. R. 10 Ch. 567; 44 L. J. Ch. 695; 32 L. T. 849; 23 W. R. 800—C. A.) applied.  
*In re Atkinson, Proctor v. Atkinson* . 434
- Broad, In re** ([1901] 2 Ch. 86; 85 L. T. 577—Kekewich, J.) not followed.  
*In re Barnett, Dawes v. Iwer* . . . 467
- Bromley Rural District Council v. Croydon Corporation** ([1907] 2 K. B. 39; 76 L. J. K. B. 599; 71 J. P. 166; 97 L. T. 173; 5 L. G. R. 453—Walton, J.) reversed in part . . . 264
- Brook, Ltd. v. Meltham Urban District Council** ([1908] 2 K. B. 349; 77 L. J. K. B. 721; 72 J. P. 298; 52 Sol. Jo. 482—Div. Ct.) reversed . . . 661
- Brotherton, In re; Brotherton v. Brotherton** ((1907) 77 L. J. Ch. 58; 97 L. T. 880—Joyce, J.) varied by consent . 559
- Brown, Re** ([1894] 3 Ch. 412; 63 L. J. Ch. 729; 71 L. T. 365; 43 W. R. 175—C. A.) followed.  
*Re Auchmuty* . . . 365
- Bruce, In re; Lawford v. Bruce** ([1908] 1 Ch. 350; 77 L. J. Ch. 434; 98 L. T. 834—Neville, J.) reversed . 223
- Budd's Case** ((1861) 3 De G. F. & J. 297) applied.  
*In re Discoverers Finance Corporation* . 90
- Bullock v. Downes** ((1860) 9 H. L. C. 73) applied.  
*In re Wilson* . . . 691
- Burgess and Others v. Constantine** ((1908) 24 T. L. R. 267—Bigham, J.) reversed . . . 570
- Burgess v. Booth** ([1908] 1 Ch. 880; 77 L. J. Ch. 439; 98 L. T. 668—Eve, J.) reversed . . . 301
- "Burns," The** ((1907) 23 T. L. R. 258—Deane, J.) affirmed . . . 496



# LIST OF CASES AFFIRMED, REVERSED, ETC.

COL.	COL.
<b>Burt, Boulton and Hayward v. Bull</b> ([1895] 1 Q. B. 276; 64 L. J. Q. B. 232; 71 L. T. 810; 43 W. R. 180; 2 Manson, 94—C. A.) considered. <i>Plumpton v. Burkinshaw</i> . . . . . 365	<b>Chippendale v. Lawley &amp; Co.</b> (7 N.S.W. S. R. 538) reversed . . . . . 169 <b>"Clan Cumming"</b> ((1906) 94 L. T. 174; 10 Asp. M. C. 189—Barnes, Pres.) affirmed . . . . . 595
<b>Butterley Co., Ltd. v. New Hucknall Colliery Co., Ltd.</b> ([1908] 2 Ch. 475; 77 L. J. Ch. 746; 24 T. L. R. 752— Neville, J.) reversed . . . . . 422	<b>Clayton's Case</b> ((1814) 1 Mer. 608; 15 R. R. 161) held not applicable. <i>Admiralty v. Mills</i> . . . . . 24
— ([1908] 25 T. L. R. 45; 53 Sol. Jo. 45 —C. A.) applied. <i>Locker-Lampson v. Stareley Coal and Iron Co., Ltd.</i> . . . . . 422	<b>Cleeve v. Financial Corporation</b> ((1873) L. R. 16 Eq. 363; 43 L. J. Ch. 54; 29 L. T. 89) approved. <i>Thompson v. Henderson's Transvaal Estates, Ltd.</i> . . . . . 92
C.	
<b>Cairn Line of Steamships, Ltd. v. Corporation of Trinity House</b> ([1907] 1 K. B. 604; 76 L. J. K. B. 377; 96 L. T. 846; 23 T. L. R. 341; 12 Com. Cas. 244; 10 Asp. M. C. 457—Bray, J.) affirmed . . . . . 607	<b>Clifford v. Timms</b> ([1907] 2 Ch. 236; 76 L. J. Ch. 627; 97 L. T. 266; 23 T. L. R. 601—C. A.) affirmed. . . 450
<b>Campbell v. Australian Mutual Provident Society</b> (7 S. R. N.S.W. 99) affirmed 78	<b>Clydesdale Shipowners' Co., Ltd. v. Gallaher</b> ([1907] 2 I. R. 578—C. A.) affirmed 584
<b>Castellain v. Preston</b> ((1883) 11 Q. B. D. 380; 52 L. J. Q. B. 366; 49 L. T. 29; 31 W. R. 559—C. A.) applied. <i>Assicurazioni Generali de Trieste v. Empress Assurance Corporation, Ltd.</i> . . . . . 316	<b>Cobbett v. Wood</b> ([1908] 1 K. B. 590; 77 L. J. K. B. 406; 98 L. T. 45; 24 T. L. R. 233—Pickford, J.) reversed 611
<b>Cavalier v. Pope</b> ([1906] A. C. 428; 75 L. J. K. B. 609; 95 L. T. 65; 22 T. L. R. 648—H. L.) followed. <i>Cameron v. Young</i> . . . . . 551	<b>Cohen v. Bayley-Worthington</b> ([1908] 1 Ch. 26; 77 L. J. Ch. 1; 98 L. T. 143— C. A.) affirmed . . . . . 526
<b>Chapman v. Franklin</b> ((1905) 21 T. L. R. 515) distinguished. <i>Goodson v. Baker</i> . . . . . 249	<b>Cole v. James</b> ([1897] 1 Q. B. 418; 66 L. J. Q. B. 249; 61 J. P. 230; 76 L. T. 119; 45 W. R. 317—Div. Ct.) followed. <i>Cobbett v. Wood</i> . . . . . 611
<b>Chapman v. Michaelson</b> ([1908] 2 Ch. 612; 24 T. L. R. 795; 52 Sol. Jo. 661— Eve, J.) affirmed . . . . . 426	<b>Colls v. Home and Colonial Stores, Ltd.</b> ([1904] A. C. 179; 73 L. J. Ch. 484; 53 W. R. 30; 90 L. T. 687; 20 T. L. R. 475—H. L.) explained. <i>Morgan v. Fear</i> . . . . . 193
<b>Charing Cross, &amp; Co. Corporation v. Wood- thorpe</b> ((1903) 67 J. P. 286; 88 L. T. 772—Div. Ct.) followed. <i>County of London Electric Supply Co., Ltd. v. Perkins</i> . . . . . 412	<b>Colne Valley Water Co. v. Hall</b> ((1907) 71 J. P. 173; 96 L. T. 395; 5 L. G. R. 260—Div. Ct.) affirmed . . . . . 666
<b>Charrington &amp; Co. v. Camp</b> ([1902] 1 Ch. 386; 71 L. J. Ch. 196; 86 L. T. 15; 18 T. L. R. 152—Joyce, J.) discussed. <i>Lewy &amp; Sons, Ltd. v. Callingham and Thompson</i> . . . . . 340	<b>Colquhoun v. Glasgow Faculty of Pro- curators</b> ((1904) 7 F. 345; 42 Sc. L. R. 271—Ct. of Sess.) reversed . 310
<b>Chester Waterworks Co. v. Chester Union</b> ((1907) 71 J. P. 133; 96 L. T. 566; 23 T. L. R. 245; 5 L. G. R. 215— Jelf, J.) varied . . . . . 669	<b>"Commonwealth, The," or "The Welsh Girl"</b> ((1906) 22 T. L. R. 475—Deane, J.) affirmed . . . . . 317
<b>Chesterfield (Lord) v. Harris</b> ([1908] 1 Ch. 230; 77 L. J. Ch. 111; 98 L. T. 236; 24 T. L. R. 105—Neville, J.) reversed . . . . . 191, 231	<b>Conway v. Wade</b> ((1908) 24 T. L. R. 604— Div. Ct.) reversed . . . . . 635 <b>Coope v. Cresswell</b> ((1866) L. R. 2 Ch. 112, 122— <i>Dictum</i> of Lord Chelmsford, L. C.) explained and followed. <i>In re Atkinson, Proctor v. Atkinson</i> . 433
	<b>Cooper v. Cooper</b> ((1874) L. R. 7 H. L. 53) followed. <i>Blake v. Bayne</i> . . . . . 218
	<b>Copestake v. Hoper</b> ([1907] 1 Ch. 366; 77 L. J. Ch. 232; 96 L. T. 322; 23 T. L. R. 310—Kekewich, J.) re- versed . . . . . 115

# LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
<b>Cornbrook Brewery Co. v. Law Debenture Corporation</b> ([1904] 1 Ch. 103; 73 L. J. Ch. 121; 89 L. T. 680; 52 W. R. 242; 20 T. L. R. 140; 11 Manson, 60—C. A.) distinguished.		<b>"Crusader, The"</b> ([1907] P. 15; 76 L. J. P. 19; 96 L. T. 126; 10 Asp. M. C. 353—Barnes, Pres.) affirmed	601
<i>Cunard Steamship Co. v. Hapwood</i>	73	<b>Curtice v. London City and Midland Bank</b> ((1907) 23 T. L. R. 594—Div. Ct.) reversed	25
<i>Bristol United Breweries v. Abbot</i>	72		
<b>Cornfoot v. Fowke</b> ((1842) 6 L. J. Ex. 297; 6 M. & W. 358) explained.			D.
<i>Pearson v. Dublin Corporation</i>	51	<b>Darling &amp; Sons v. Raeburn</b> ([1906] 1 K. B. 572; 75 L. J. K. B. 415; 95 L. T. 108; 22 T. L. R. 465; 10 Asp. M. C. 268; 11 Com. Cas. 147—Kennedy, J.) affirmed	580
<b>Corsellis v. London County Council</b> ([1907] 1 Ch. 704; 76 L. J. Ch. 313; 71 J. P. 219; 96 L. T. 614; 23 T. L. R. 366; 5 L. G. R. 577—Neville, J.) varied	417, 259	<b>Darnley (Earl of), In re</b> ([1907] 1 Ch. 159; 76 L. J. Ch. 58; 95 L. T. 706; 23 T. L. R. 93—Kekewich, J.) followed.	
<b>Corser v. Cartwright</b> ((1875) L. R. 7 H. L. 731) applied.		<i>In re Oliver</i>	695
<i>In re Henson</i>	221, 431, 697	<b>Davies' Case</b> ((1688) 3 Mod. 246) followed.	
<b>Costello's Case</b> ((1860) 2 De G. F. & J. 302) applied.		<i>Fitzhardinge (Lord) v. Purcell</i>	665
<i>In re Discoverers Finance Corporation</i>	90	<b>Davies v. Seisdon Union</b> ([1907] 1 K. B. 630; 76 L. J. K. B. 472; 71 J. P. 153; 96 L. T. 315; 23 T. L. R. 251; 5 L. G. R. 306—C. A.) affirmed	520
<b>Cotton v. Imperial and Foreign Agency and Investment Corporation</b> ([1892] 3 Ch. 454; 61 L. J. Ch. 684; 67 L. T. 342; 8 T. L. R. 777—Chitty, J.) overruled.		<b>Davis v. Foreman</b> ([1894] 3 Ch. 654; 43 W. R. 168—Kekewich, J.) followed.	
<i>Bisgood v. Henderson's Transvaal Estates, Ltd.</i>	83	<i>Kirchner &amp; Co. v. Gruban</i>	302, 404
<b>Cowper v. Scott</b> ((1731) 3 P. Wms. 119) followed.		<b>Davis v. Wallis</b> ([1908] 2 K. B. 134; 77 L. J. K. B. 432; 72 J. P. 165; 98 L. T. 411; 24 T. L. R. 330; 6 L. G. R. 493—Div. Ct.) overruled.	
<i>In re Ruby, Howlett v. Newington</i>	182, 688	<i>White and Hales v. Islington Borough Council</i>	514
<b>Cox v. Bleines</b> ([1902] 1 K. B. 670; 71 L. J. K. B. 437; 66 J. P. 407; 86 L. T. 563; 50 W. R. 392; 18 T. L. R. 356—Div. Ct.) followed.		<b>De la Bere v. Pearson, Ltd.</b> ([1907] 1 K. B. 483; 76 L. J. K. B. 309; 96 L. T. 425; 23 T. L. R. 264—Ld. Alverstone, C. J.) affirmed	106
<i>Houghton v. Burton</i>	238	<b>De Morgan v. Metropolitan Board of Works</b> ((1880) 5 Q. B. D. 155; 49 L. J. M. C. 51; 44 J. P. 296; 42 L. T. 238; 23 W. R. 489) followed.	
— explained.		<i>Brighton Corporation v. Packham</i>	664
<i>Mattinson v. Binley</i>	239	<b>Denaby and Cadeby Main Collieries, Ld. v. Yorkshire Miners' Association</b> ([1906] A. C. 537; 75 L. J. K. B. 961; 95 L. T. 561; 22 T. L. R. 543—H. L.) distinguished.	
<b>Cox v. Burbridge</b> ((1863) 13 C. B. (N. s.) 430) distinguished.		<i>Smithies v. National Association of Plasterers</i>	636
<i>Higgins v. Searle</i>	265	<b>Devonport Corporation v. Tozer</b> ([1903] 1 Ch. 759; 72 L. J. Ch. 411; 67 J. P. 269; 52 W. R. 6; 88 L. T. 113; 19 T. L. R. 257—C. A.) followed.	
<b>Craig v. Dowding</b> ((1907) 97 L. T. 683; 24 T. L. R. 9; 25 P. P. C. 1—Kekewich, J.) reversed	456	<i>Attorney-General and Others v. Pontypridd Waterworks Co.</i>	475
<b>Cross, In re</b> ((1848) 4 De G. & Sm. 364 (n)) followed.		<b>Dewar v. Goodman</b> ([1908] 1 K. B. 94; 77 L. J. K. B. 169; 97 L. T. 885; 24 T. L. R. 62—C. A.) affirmed	342
<i>In re Myers</i>	36		
<b>Croydon Corporation v. Croydon Rural District Council</b> ([1908] 1 Ch. 222; 77 L. J. Ch. 138; 72 J. P. 13; 98 L. T. 182; 24 T. L. R. 91; 6 L. G. R. 316—Neville, J.) varied	511		
<b>Croydon Rural District Council v. Sutton District Water Co.</b> ((1907) 71 J. P. 513; 6 L. G. R. 359—Div. Ct.) affirmed	109		

# LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.	E.	COL.
<b>Dibden v. Skirrow</b> ([1907] 1 Ch. 437; 76 L. J. Ch. 268; 71 J. P. 145; 96 L. T. 257; 23 T. L. R. 269; 5 L. G. R. 286—Neville, J.) affirmed	230	<b>Earle v. Kingscote</b> ((1900) 2 Ch. 585; 69 L. J. Ch. 725; 83 L. T. 377; 49 W. R. 3; 16 T. L. R. 511—C. A.) distinguished.	
<b>Dick v. Audsley</b> ([1907] S. C. 953—Ct. of Sess.) affirmed	62	<i>William Cuenod &amp; Co. v. Leslie and Wife</i>	280
<b>Dillet, In re</b> ((1887) 12 App. Cas. 459; 56 L. T. 615; 36 W. R. 81; 16 Cox, C. C. 241—P. C.) followed.		<b>East London Harbour Board v. Caledonia, etc. Co.</b> ((1906) 23 S. C. R. 540) affirmed	604
<i>Tshingumazi v. Attorney-General for Natal</i>	483	<b>Eastwood Brothers v. Honley Urban District Council</b> ([1901] 1 Ch. 645; 70 L. J. Ch. 313; 84 L. T. 169; 49 W. R. 308—C. A.) discussed.	
<b>Discoverers Finance Corporation, Ltd., In re</b> ([1908] 1 Ch. 141; 77 L. J. Ch. 36; 97 L. T. 757; 14 Manson, 333; 24 T. L. R. 12—Parker, J.) compromised	91	<i>Brook, Ltd. v. Meltham Urban District Council</i>	661
<b>Dodd v. Dodd</b> ([1906] P. 189; 75 L. J. P. 49; 70 J. P. 163; 54 W. R. 541; 94 L. T. 709; 22 T. L. R. 484—Barnes, Pres.) followed.		<b>Egbert v. Short</b> ([1907] 2 Ch. 205; 76 L. J. Ch. 520; 97 L. T. 90; 20 T. L. R. 558—Warrington, J.) approved.	
<i>Harriman v. Harriman</i>	284	<i>In re Norton's Settlement, Norton v. Norton</i>	490
<i>Wilson v. Wilson</i>	284	<b>Electromobile Co., Ltd. v. British Electromobile Co., Ltd. and Others</b> ((1907) 97 L. T. 196; 23 T. L. R. 631; 24 R. P. C. 638—Warrington, J.) affirmed	632
<b>Dodson, In re</b> ([1907] 1 Ch. 284; 76 L. J. Ch. 182; 96 L. T. 254—Warrington, J.) not followed.		<b>Elementary Education Acts, In re</b> ([1908] 2 Ch. 503; 72 J. P. 445; 24 T. L. R. 808; 52 Sol. Jo. 681—Joyce, J.) affirmed	96
<i>In re Orlebar</i>	162	<b>Elliston v. Reacher</b> ([1908] 2 Ch. 374; 77 L. J. Ch. 617; 99 L. T. 346—Parker, J.) affirmed	547
<i>In re Hadley</i>	162	<b>Emanuel v. Symon</b> ([1907] 1 K. B. 235; 76 L. J. K. B. 147; 98 L. T. 231; 23 T. L. R. 94—Channell, J.) reversed	103
<b>Donaldson v. Beckett</b> ((1774) 4 Burr. 2408) applied.		<b>English and Colonial Produce Co., Ltd., In re</b> ([1906] 2 Ch. 435; 75 L. J. Ch. 831; 95 L. T. 85—Buckley, J.) overruled on one point.	
<i>Mansell v. Thames Valley Printing Co.</i>	394	<i>In re National Motor Mail Coach Co., Ltd., Clinton's Claim</i>	68
<b>Donnelly v. Baird &amp; Co.</b> ((1908) 45 Sc. L. R. 394—Ct. of Sess.) approved.		<b>Evans v. Davis</b> ((1878) 10 Ch. D. 747; 48 L. J. Ch. 223; 39 L. T. 391; 27 W. R. 285) followed.	
<i>Warneker v. Moreland and Son, Ltd.</i>	394	<i>Moore v. Ullecats Mining Co., Ltd.</i>	339
<b>Dormer v. Ward</b> ([1901] P. 20; 69 L. J. P. 144; 83 L. T. 556; 49 W. R. 149—C. A.) followed.		<b>Evans v. Newport Urban Sanitary Authority</b> ((1889) 24 Q. B. D. 264; 59 L. J. M. C. 8; 54 J. P. 374; 61 L. T. 684; 38 W. R. 400—Div. Ct.) distinguished.	
<i>Sharpe v. Sharpe</i>	291	<i>Portsmouth Corporation v. Hall</i>	271
<b>Doughty v. Bowman</b> ((1848) 11 Q. B. 444) discussed.		F.	
<i>Dewar v. Goodman</i>	342	<b>Failes v. Failes</b> ([1906] P. 326; 75 L. J. P. 95; 95 L. T. 547; 22 T. L. R. 687—Bucknill, J.) not followed.	
<b>Douglas v. Baines</b> ([1907] T. S. 508) affirmed	172	<i>Wilson v. Wilson</i>	284
<b>Dover Coalfield Extension, Ltd., In re</b> ([1907] 2 Ch. 76; 76 L. J. Ch. 434; 96 L. T. 837; 14 Manson, 156—Warrington, J.) affirmed	76		
<b>Dublin (City of) Steamboat Packet Co. v. The King</b> ((1908) 24 T. L. R. 657—Eve, J.) reversed	108		
<b>Dunsany's Settlement, Re</b> ([1906] 1 Ch. 578; 75 L. J. Ch. 356; 94 L. T. 361—C. A.) applied.			
<i>Re Pearce's Settlement</i>	556		
<b>Dyer v. Dyer</b> ([1788] 2 Cox, 92—Eyre, C. B.) applied.			
<i>"The Venture"</i>	571		



## LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.
<b>Farnham v. Milward &amp; Co.</b> ([1895] 2 Ch. 730; 64 L. J. Ch. 717; 73 L. T. 231—C. A.) followed. <i>In re Townshend's Settlement</i> . . . . .	364
<b>Farquhar v. Newbury Rural District Council</b> ([1908] 2 Ch. 586; 72 J. P. 445—Warrington, J.) affirmed . . . . .	259
<b>Fear v. Morgan</b> ([1906] 2 Ch. 406; 75 L. J. Ch. 787; 95 L. T. 167—C. A.) affirmed . . . . .	193
<b>Fearnside, In re</b> ([1903] 1 Ch. 250; 72 L. J. Ch. 200; 51 W. R. 186; 88 L. T. 57; 19 T. L. R. 104—Eady, J. followed. <i>In re Orlebar</i> . . . . . <i>In re Hadley</i> . . . . .	162 162
<b>Fenn v. Smart</b> ((1810) 12 East. 444—dicta of Bayley, J.) followed. <i>Moore v. Ullcoats Mining Co., Ltd.</i> . . . . .	339
<b>Fergusson v. Malvern Urban District Council</b> ((1908) 72 J. P. 101—Lawrance, J.) reversed . . . . .	660
<b>Finch v. Bannister</b> ([1908] 1 K. B. 485; 77 L. J. K. B. 313; 72 J. P. 73; 97 L. T. 913—Div. Ct.) affirmed . . . . .	565
<b>Firth v. M'Phail</b> ([1905] 2 K. B. 300; 74 L. J. K. B. 458; 69 J. P. 203; 92 L. T. 567; 21 T. L. R. 403; 3 L. G. R. 478—Div. Ct.) distinguished. <i>Cork Rural District Council v. Walsh</i> . . . . .	237, 238
<b>Fitzgerald v. Tilling, Ltd.</b> ((1907) 96 L. T. 718) followed. " <i>The Blanche</i> " . . . . .	7
<b>Forbes v. Aspinall</b> ((1811) 13 East, 323) discussed. <i>United States Shipping Co. v. Empress Assurance Corporation, Ltd.</i> . . . . .	313
<b>Forbes v. Peacock</b> ((1846) 1 Ph. 717) applied. <i>In re Henson</i> . . . . .	221, 431, 697
<b>Forster v. Elvet Colliery Co.</b> ([1908] 1 K. B. 629; 77 L. J. K. B. 521; 98 L. T. 736; 24 T. L. R. 265; 52 Sol. Jo. 224—C. A.) affirmed . . . . .	420
<b>Foster v. Warblington Urban District Council</b> ([1906] 1 K. B. 648; 75 L. J. K. B. 574; 70 J. P. 233; 54 W. R. 575; 94 L. T. 876; 22 T. L. R. 421; 4 L. G. R. 735—C. A.) followed. <i>Owen v. Faversham Corporation</i> . . . . .	446
<b>Frewin v. Phillips</b> ((1861) 11 C. B. (N. S.) 449) approved and followed. <i>Moran v. Fear</i> . . . . .	193
<b>Fuller v. White Feather Reward, Ltd.</b> ([1906] 1 Ch. 823; 75 L. J. Ch. 393; 95 L. T. 404; 22 T. L. R. 400; 13 Manson, 136—Warrington, J.) overruled. <i>Bisgood v. Henderson's Transvaal Estates, Ltd.</i> . . . . .	83
(i). <b>Garvey v. Hibbert</b> ((1812) 19 Ves. 125) applied. <i>In re Sharp</i> . . . . .	681
<b>Gausson v. Whatman</b> ((1905) 93 L. T. 101) discussed. <i>In re Quicke, Poltimore v. Quicke</i> . . . . .	307
<b>Geipel's Patent, In re</b> ([1903] 2 Ch. 715; 89 L. T. 127; 52 W. R. 63—Buckley, J.) followed. <i>In re Klüber and Steinberg's Patent</i> . . . . .	456
<b>General Accident Assurance Corporation, Ltd. v. McGowan</b> ([1907] S. C. 1004; 44 Sc. L. R. 792—Ct. of Sess.) affirmed . . . . .	299
<b>General Bill-Posting Co., Ltd. v. Atkinson</b> ([1908] 1 Ch. 537; 77 L. J. Ch. 411; 98 L. T. 482; 24 T. L. R. 285; 52 Sol. Jo. 240—C. A.) affirmed . . . . .	404, 633
<b>Genery v. Fitzgerald</b> ((1822) Jac. 468) discussed. <i>In re Oliver</i> . . . . .	695
<b>Gestetner's Trade Mark, In re</b> ([1907] 2 Ch. 478; 76 L. J. Ch. 616; 24 R. P. C. 545—Neville, J.) affirmed 639	
<b>Gillespie v. Riddell</b> ([1908] S. C. 628; 45 Sc. L. R. 514—Ct. of Sess.) affirmed . . . . .	551
<b>Gingell, Son &amp; Foskett, Ltd. v. Stepney Borough Council</b> ([1906] 2 K. B. 468; 75 L. J. K. B. 777; 70 J. P. 503; 95 L. T. 146; 22 T. L. R. 688; 4 L. G. R. 1092—Eady, J.) affirmed . . . . .	376
<b>Givern v. Massey</b> ((1892) 31 L. R. Ir. 126) followed. <i>In re Wilson, Wilson v. Wilson</i> . . . . .	698
<b>Glasgow Corporation v. Caledonian Ry. Co.</b> ([1908] S. C. 244—Ct. of Sess.) affirmed . . . . .	267
<b>Glasgow Pavilion, Ltd. v. Motherwell</b> ((1903) 6 F. 116—Ct. of Sess.) distinguished. <i>In re National Motor Mail Coach Co., Ltd.</i> . . . . .	87

# LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
<b>Glenie v. Bruce-Smith</b> ([1907] 2 K. B. 507; 76 L. J. K. B. 874; 97 L. T. 434; 23 T. L. R. 596—Lawrance, J.) affirmed . . . . .	43	<b>Greenshields, Cowie &amp; Co. v. Stephens and Sons</b> , ([1908] 1 K. B. 51; 77 L. J. K. B. 124; 98 L. T. 89; 52 Sol. Jo. 727; 13 Com. Cas. 91; 10 Asp. M. C. 597—C. A.) affirmed . . . . .	314
<b>Glukman, In re; Attorney-General v. Jeffreys</b> ([1908] 1 Ch. 552; 77 L. J. Ch. 326; 98 L. T. 486; 24 T. L. R. 340; 52 Sol. Jo. 279—C. A., reversing [1907] 1 Ch. 171; 76 L. J. Ch. 82; 96 L. T. 225; 23 T. L. R. 212—Eady, J.) affirmed . . . . .	218	<b>"Greta Holme, The"</b> ([1897] A. C. 596; 66 L. J. P. 166; 77 L. T. 231—H. L.) applied.	
<b>Gorringe v. Mahlstedt</b> ([1907] A. C. 225; 76 L. J. Ch. 527; 97 L. T. 111—H. L.) distinguished.		<b>"The Marpessa"</b> . . . . .	599
<i>In re Lambert, Corns v. Harrison</i> . . . . .	692	<b>Grimthorpe (Lord), In re; Beckett v. Grimthorpe</b> ([1908] 1 Ch. 666; 77 L. J. Ch. 321; 98 L. T. 634; 24 T. L. R. 356—Eve, J.) affirmed on other grounds. . . . .	163
<b>Gough v. Wood &amp; Co.</b> ([1894] 1 Q. B. 713; 63 L. J. Q. B. 564; 70 L. T. 297; 42 W. R. 469—C. A.) distinguished.		<b>Groh v. Hesketh</b> ([1907] 2 K. B. 232; 76 L. J. K. B. 787; 71 J. P. 339; 97 L. T. 179; 23 T. L. R. 501—Div. Ct.) affirmed . . . . .	326
<i>Ellis v. Glover and Hobson, Ltd.</i> . . . . .	430	<b>"Guildhall, The"</b> ([1908] P. 29; 77 L. J. P. 52; 98 L. T. 7; 10 Asp. M. C. 585—C. A.) reversed . . . . .	594
<b>Graham v. Drummond</b> ([1896] 1 Ch. 968; 65 L. J. Ch. 472; 74 L. T. 417; 44 W. R. 596; 12 T. L. R. 319—Romer, J.) distinguished.		<b>Guinness v. Carahar</b> ([1900] 2 I. R. 505) followed.	
<i>The Bank of Bombay and Another v. Suleman Sonji and Others</i> . . . . .	222, 431, 697	<i>Haigh v. Purcell</i> . . . . .	475
<b>Gramophone and Typewriter, Ltd. v. Stanley</b> ([1906] 2 K. B. 856; 75 L. J. K. B. 1031; 95 L. T. 461; 22 T. L. R. 818—Walton, J.) affirmed . . . . .	297	<b>Guthrie, Craig, Peter &amp; Co. v. Magistrates of Brechin</b> (1888) 15 R. 385—Ct. of Sess.) not followed.	
<b>Great Central Ry. Co. v. Banbury Union</b> ([1907] 1 K. B. 717; 76 L. J. K. B. 577; 71 J. P. 157; 96 L. T. 243; 23 T. L. R. 283; 5 L. G. R. 328—C. A.) reversed . . . . .	518	<i>Brook, Ltd. v. Meltham Urban District Council</i> . . . . .	661
<b>Great Central Ry. Co. v. Sheffield Union Assessment Committee</b> ([1908] 1 K. B. 750; 77 L. J. K. B. 484; 72 J. P. 139; 98 L. T. 543; 6 L. G. R. 377—C. A.) reversed . . . . .	519	H.	
<b>Great Eastern Ry. Co. and London County Council, In re</b> ((1907) 71 J. P. 95; 95 L. T. 803; 5 L. G. R. 162—Kennedy, J.) affirmed on different grounds . . . . .	95	<b>Hadley, In re</b> ((1908) 77 L. J. Ch. 669; 99 L. T. 296; 24 T. L. R. 773; 52 Sol. Jo. 640—Parker, J.) reversed . . . . .	162
<b>Great Western Ry. Co. v. Carpalla United China Clay Co., Ltd. and Another</b> , (77 L. J. Ch. 673; 72 J. P. 457; 24 T. L. R. 804; 52 Sol. Jo. 683; [1908] W. N. 178—Eve, J.) affirmed . . . . .	421	<b>Hall v. Hubner</b> ((1897) 24 R. 875—Ct. of Sess.) overruled.	
<b>Great Western Ry. Co. v. Midland Ry. Co.</b> ([1908] 2 Ch. 445; 99 L. T. 189—Warrington J.) affirmed . . . . .	502, 630	<i>Cameron v. Young</i> . . . . .	551
<b>Green v. Newport Union Assessment Committee</b> ([1907] 2 K. B. 460; 76 L. J. K. B. 753; 71 J. P. 263; 97 L. T. 413; 5 L. G. R. 892—C. A.) reversed . . . . .	517	<b>Hallett, In re; Knatchbull v. Hallett</b> ((1880) 13 Ch. D. 696) applied.	
		<i>Admiralty v. Mills</i> . . . . .	24
		<b>Hard v. Fletcher</b> ((1778) 1 Doug. 43) applied.	
		<i>Markham v. Paget</i> . . . . .	338
		<b>Hargreaves, In re</b> ((1900) 88 L. T. 100—Romer, J.) followed.	
		<i>In re Gilbert</i> . . . . .	688
		Explained and distinguished.	
		<i>In re Poyser</i> . . . . .	689
		<b>Harnett v. Crick</b> (7 N. S. W. S. R. 126) reversed . . . . .	170
		<b>Harrison, In re</b> ((1889) 43 Ch. D. 55; 59 L. J. Ch. 169; 61 L. T. 762; 38 W. R. 265—North, J.) followed.	
		<i>In re Perkins, Brown v. Perkins</i> . . . . .	530

# LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
<b>Harrison v. Rutland (Duke of)</b> ([1893] 1 Q. B. 142; 62 L. J. Q. B. 117; 57 J. P. 278; 68 L. T. 35; 41 W. R. 322—C. A.) applied.		<b>Hill v. Clifford</b> ([1907] 2 Ch. 236; 76 L. J. Ch. 627; 97 L. T. 266; 23 T. L. R. 601—C. A.) affirmed	450
<b>Fitzhardinge (Lord) v. Purcell</b>	665	<b>Hindle v. Brown</b> ([1907] 98 L. T. 44—Pickford, J.) affirmed	22, 424
<b>Harrogate Estates, Ltd., In re</b> ([1903] 1 Ch. 498; 72 L. J. Ch. 313; 88 L. T. 82; 51 W. R. 334; 19 T. L. R. 246; 10 Manson; 113—Buckley, J.) applied.		<b>Hirst and Capes, In re</b> ([1908] 1 K. B. 982; 77 L. J. K. B. 930; 52 Sol. Jo. 684—C. A.) affirmed	614
<b>Canard Steamship Co. v. Hopwood</b>	73	<b>Hobart v. Southend-on-Sea Corporation</b> ((1906) 75 L. J. K. B. 305; 70 J. P. 192; 54 W. R. 454; 94 L. T. 337; 22 T. L. R. 307, 530; 4 L. G. R. 757—Buckley, J.) followed.	
<b>Hatch, Mansfield &amp; Co. v. Weingott</b> ((1905) 22 T. L. R. 366—Jelf, J.) followed.		<b>Owen v. Faversham Corporation</b>	446
<b>Assicurazioni Generali de Trieste v. Empress Assurance Corporation, Ltd.</b>	316	<b>Hobson v. Gorrington</b> ([1897] 1 Ch. 182; 66 L. J. Ch. 114; 75 L. T. 610; 45 W. R. 356—C. A.) followed.	
<b>Hawthorne, In re</b> ((1883) 23 Ch. D. 743; 52 L. J. Ch. 750; 48 L. T. 701; 32 W. R. 147) followed.		<b>Crossley Bros. v. Lee</b>	187
<b>Deschamps v. Miller</b>	4	<b>Hopkins v. Great Northern Ry. Co.</b> ((1877) 2 Q. B. D. 224; 46 L. J. Q. B. 265; 36 L. T. 898—C. A.) <i>Dictum</i> of Mellish, L. J., followed.	
<b>Hazeldine's Trusts, In re</b> ([1907] 1 Ch. 686; 76 L. J. Ch. 416—Warrington, J.) reversed	350	<b>Dibden v. Skirrow</b>	230
<b>Hedgely, In re</b> ((1886) 34 Ch. D. 379; 56 L. J. Ch. 360; 56 L. T. 19; 35 W. R. 472—North, J.) applied.		<b>Hopper, No. 66, The</b> ([1907] P. 254; 76 L. J. P. 110; 97 L. T. 360; 23 T. L. R. 414; 10 Asp. M. C. 492—C. A.) affirmed.	
<b>In re Atkinson, Proctor v. Atkinson</b>	433	<i>Sub nom. Sir John Jackson, Ltd. v. Owners of "The Blanche"</i>	7
<b>Hellawell v. Eastwood</b> ((1851) 6 Ex. 295) not followed.		<b>Horton v. Colwyn Bay and Colwyn Urban District Council</b> ([1907] 1 K. B. 14; 76 L. J. K. B. 91; 71 J. P. 69; 96 L. T. 84; 23 T. L. R. 75; 5 L. G. R. 22—Bigham, J.) affirmed	564
<b>Crossley Bros., Ltd. v. Lee</b>	187	<b>Howatson v. Webb</b> ([1907] 1 Ch. 537; 76 L. J. Ch. 346—Warrington, J.) affirmed	167
<b>Helsby, In re</b> ((1893) 1 Manson, 12) overruled on one point.		<i>Distinguished, Alliance Credit Bank v. Owen</i>	166
<b>In re Simon</b>	278	<b>Howe v. Newington JJ.</b> ([1907] 2 K. B. 340; 76 L. J. K. B. 718; 71 J. P. 242; 96 L. T. 701; 23 T. L. R. 474—Div. Ct.) affirmed	321
<b>Hennessy &amp; Co. v. Keating</b> ([1908] 1 I. R. 43; 25 R. P. C. 125—C. A. Ir.) affirmed	643	<b>Hubbuck, In re</b> ([1896] 1 Ch. 754; 65 L. J. Ch. 271; 73 L. T. 738; 44 W. R. 289—C. A.) applied.	
<b>Henry, In re</b> ([1907] 1 Ch. 30; 76 L. J. Ch. 74; 95 L. T. 776—Kekewich, J.) not followed.		<b>In re Lewis, Davis v. Harrison</b>	695
<b>In re Perkins</b>	530	<b>Hunter v. Edney</b> ((1881) 10 P. 93) followed.	
<b>Hewison v. Ricketts</b> ((1894) 63 L. J. Q. B. 711; 71 L. T. 191—Div. Ct.) distinguished.		<b>Jackson v. Jackson</b>	287
<b>Brooks v. Beirnsstein</b>	23	<b>Hutcheson v. Eaton</b> ((1884) 13 Q. B. D. 861; 51 L. T. 846—C. A.) followed.	
<b>"Hibernian, The," Tasker &amp; Co. v. Allen Bros. &amp; Co.</b> ((1906) 75 L. J. P. 70; 95 L. T. 395; 23 T. L. R. 564; 10 Asp. M. C. 281—Div. Ct.) affirmed	587	<b>In re North Western Rubber Co. and Huttenbach &amp; Co.</b>	18
<b>Hickman v. Massey</b> ([1900] 1 Q. B. 752; 69 L. J. Q. B. 511; 82 L. T. 321; 48 W. R. 385; 16 T. L. R. 274—C. A.) applied.		<b>Hyman v. Van Den Bergh</b> ([1907] 2 Ch. 516; 76 L. J. Ch. 554; 97 L. T. 297—Parker, J.) affirmed	193
<b>Fitzhardinge (Lord) v. Purcell</b>	665		
<b>Hill, In re</b> ((1870) 45 L. T. 126) distinguished.			
<b>Slade v. Chaine</b>	656		



# LIST OF CASES AFFIRMED, REVERSED, ETC.

I.	COL.	COL.
<b>Imperial Fire Insurance Co. v. Wilson</b> ((1876) 35 L. T. 271)—followed. <i>General Accident Assurance Corporation v. M'Gowan</i> . . . . . 299	<b>Jones v. Carter</b> ((1846) 15 M. & W. 718)— <i>dicta</i> of Parke, J.) followed. <i>Moore v. Ullocoats Mining Co., Ltd.</i> . . . . . 339	
<b>Inland Revenue v. Maple &amp; Co. (Paris), Ltd.</b> ([1906] 2 K. B. 834; 22 T. L. R. T. L. R. 829—C. A.) reversed . . . . . 534	<b>Joseph, In re; Pain v. Joseph</b> ([1908] 1 Ch. 599; 77 L. J. Ch. 309; 98 L. T. 392; 24 T. L. R. 276—Eve, J.) reversed . . . . . 689	
<b>International Securities Corporation, Ltd., In re</b> ((1908) 99 L. T. 581; 24 837—Eady, J.) affirmed . . . . . 90	<b>Joseph Thorley &amp; Sons, Ltd. v. Orchis Steamship Co., Ltd.</b> ([1907] 1 K. B. 243; 76 L. J. K. B. 106; 23 T. L. R. 89; 12 Com. Cas. 51—Channell, J.) affirmed . . . . . 584	
<b>Irvine v. North and South Wales Bank</b> ([1908] 1 K. B. 13; 77 L. J. K. B. 19; 97 L. T. 677; 24 T. L. R. 5; 13 Com. Cas. 69—C. A.) affirmed . . . . . 25	<b>Joseph Thorley, Ltd. v. Orchis Steamship Co., Ltd.</b> ([1907] 1 K. B. 660; 76 L. J. K. B. 595; 96 L. T. 488; 23 T. L. R. 338; 12 Com. Cas. 251—C. A.) distinguished. <i>"The Europa"</i> . . . . . 575	
J.	K.	
<b>James Nelson &amp; Sons, Ltd. v. Nelson Line (Liverpool), Ltd.</b> ([1907] 2 K. B. 705; 77 L. J. K. B. 97; 97 L. T. 661; 23 T. L. R. 656; 10 Asp. M. C. 544—C. A.) reversed on one point . . . . . 578	<b>"Kaiser Wilhelm der Grosse, The"</b> ([1907] P. 36; 76 L. J. P. 97; 96 L. T. 239; 10 Asp. M. C. 361—Barnes, Pres.) affirmed . . . . . 596	
<b>Jenkins v. Price</b> ([1907] 2 Ch. 229; 76 L. J. Ch. 507; 23 T. L. R. 608), reversed on other grounds . . . . . 341	<b>"Kate, The"</b> ([1906] P. 317; 75 L. J. P. 104; 10 Asp. M. C. 347—Deane, J.) affirmed . . . . . 603	
<b>Jochell v. Jeffreys</b> ((1701) Prec. Ch. 170) applied. <i>In re Roby, Howlett v. Newington</i> . . . . . 182, 688	<b>Kelly v. Kelly</b> ((1863) 32 L. J. P. & M. 181) distinguished. <i>Leslie v. Leslie</i> . . . . . 290	
<b>Joel v. Law Union and Crown Insurance Co.</b> ([1908] 2 K. B. 431; 24 T. L. R. 632; 52 Sol. Jo. 517—Lord Alverstone, C. J.) reversed . . . . . 308	<b>Ker v. Ker</b> ((1869) Ir. R. 4 Eq. 15) explained <i>In re Darby, Rendall v. Darby</i> . . . . . 432, 697	
<b>Johnson v. Kearley</b> ([1908] 2 K. B. 82; 77 L. J. K. B. 550; 98 L. T. 418; 24 T. L. R. 484—Bucknill, J.) affirmed . . . . . 620	<b>Kettlewell v. Refuge Assurance Co., Ltd.</b> ([1907] 2 K. B. 242; 76 L. J. K. B. 711; 97 L. T. 106; 23 T. L. R. 506) affirmed . . . . . 309	
<b>Johnson v. Kennett</b> ((1835) 3 My. & K. 624, 630) applied. <i>In re Henson</i> . . . . . 221, 431, 697	<b>Kilpatrick v. Wemyss Coal Co., Ltd.</b> ([1907] S. C. 320—Ct. of Sess.) followed. <i>Thompson v. Gould &amp; Co.</i> . . . . . 384	
<b>Johnson v. Mew, Langton &amp; Co.</b> ((1907) 97 L. T. 308; 23 T. L. R. 607—Div. Ct.) affirmed . . . . . 393	<b>Kirkheaton Local Board v. Ainley, Sons &amp; Co.</b> ([1892] 2 Q. B. 274; 61 L. J. Q. B. 812; 56 J. P. 374; 67 L. T. 209; 41 W. R. 99—C. A.) followed. <i>Butterworth &amp; Co. v. West Riding Rivers Board.</i> . . . . . 662	
<b>Johnson v. Pickering; Norton, claimant</b> ([1907] 2 K. B. 437; 76 L. J. K. B. 904; 97 L. T. 516; 23 T. L. R. 579; 14 Manson, 191—Lawrance, J.) reversed . . . . . 556	<b>"Knaresbro, The"</b> ([1900] P. 38 (n)) followed. <i>"The Kaiser Wilhelm der Grosse"</i> . . . . . 596	
<b>Jonas v. St. Dunstan's Overseers</b> ((1907) 71 J. P. 33; 95 L. T. 787; 23 T. L. R. 13; 5 L. G. R. 147—Div. Ct.) affirmed . . . . . 522	<b>Kruger &amp; Co., Ltd. v. Moel Tryvan Ship Co.</b> <i>Decisions of Phillimore, J.</i> ([1906] 2 K. B. 792; 75 L. J. K. B. 878; 95 L. T. 614; 22 T. L. R. 821; 10 Asp. M. C. 310; 12 Com. Cas. 38) and the C. A. ([1907] 1 K. B. 809; 76 L. J. K. B. 550; 96 L. T. 429; 23 T. L. R. 271; 10 Asp. M. C. 416) affirmed . . . . . 583	
<b>Jones, In re</b> ([1893] 2 Ch. 461; 62 L. J. Ch. 996; 69 L. T. 45—North, J.) distinguished. <i>In re Darby Rendall v. Darby</i> . . . . . 432, 697		

# LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
<b>Kydd v. Liverpool Watch Committee</b> ([1907] 2 K. B. 591; 76 L. J. K. B. 1155; 71 J. P. 409; 97 L. T. 453; 23 T. L. R. 624; 5 L. G. R. 1168—C. A.) reversed . . . . .	358, 371	<b>Liverpool Corporation v. West Derby Union Assessment Committee</b> ((1908) 72 J. P. 228; 98 L. T. 420—Div. Ct.) affirmed . . . . .	523
L.			
<b>Lambeth Overseers v. London County Council (The "Brockwell Park Case")</b> ([1907] A. C. 625; 66 L. J. Q. B. 806; 61 J. P. 580; 76 L. T. 795; 46 W. R. 79—H. L.) applied.		<b>Lloyd, In re</b> ([1903] 1 Ch. 385; 72 L. J. Ch. 78; 51 W. R. 177; 87 L. T. 541; 19 T. L. R. 101—C. A.) distinguished.	
<i>Liverpool Corporation v. West Derby Union Assessment Committee</i> . . . . .	523	<i>In re Hazeldine's Trusts</i> . . . . .	350
<b>Lane v. Goodwin</b> ((1843) 4 Q. B. 361) followed.		<b>Lloyds Bank, Ltd. v. Cooke</b> ([1907] 1 K. B. 794; 76 L. J. K. B. 666; 96 L. T. 715; 23 T. L. R. 429—C. A.) distinguished.	
<i>In re Rutter, Donaldson v. Rutter</i> . . . . .	275	<i>Smith v. Prosser</i> . . . . .	44
<b>Larsen v. Sylvester &amp; Co.</b> ((1907) 24 T. L. R. 488—C. A.) affirmed . . . . .	576	<b>Local Government Board for Ireland v. Blackburn Union</b> (72 J. P. 254—Qr. Sess.) affirmed . . . . .	466
<b>Lavelette v. Riches &amp; Co.</b> ((1907) 24 T. L. R. 2—Walton, J.) reversed . . . . .	113	<b>Lodge v. National Union Investment Co.</b> ([1907] 1 Ch. 300; 76 L. J. Ch. 187; 96 L. T. 301; 23 T. L. R. 187—Parker, J.) distinguished.	
<b>Leigh v. Taylor</b> ([1902] A. C. 157; 71 L. J. Ch. 272; 50 W. R. 623; 86 L. T. 239; 18 T. L. R. 293—H. L.) distinguished.		<i>Chapman v. Michaelson</i> . . . . .	426
<i>In re Whaley, Whaley v. Roehrich</i> . . . . .	525	<b>London and India Docks Co. v. Thames Steam Tug and Lighterage Co.—The Same v. McDougall and Bonthron, Ltd.—The Same v. Page, Son, and East, Ltd.</b> Decisions of C. A. ([1908] 2 K. B. 175; 97 L. T. 674; 23 T. L. R. 765; 10 Asp. M. C. 557; and [1908] 1 K. B. 786; 97 L. T. 357; 23 T. L. R. 590; 10 Asp. M. C. 512) reversed . . . . .	605
<b>Leng, Sir W. C., &amp; Co. (Sheffield Telegraph), Ltd. v. Andrews</b> (1908) 24 T. L. R. 853; 52 Sol. Jo. 714—Eve, J.) reversed . . . . .	633	<b>London and North Western Ry. Co. v. Ampthill Union Assessment Committee</b> ((1906) 70 J. P. 46; 94 L. T. 314; 4 L. G. R. 92—Div. Ct.) affirmed . . . . .	519
<b>Leonis Steamship Co., Ltd. v. Joseph Rank, Ltd.</b> ([1907] 1 K. B. 344; 76 L. J. K. B. 342; 96 L. T. 458; 23 T. L. R. 215; 12 Com. Cas. 173; 10 Asp. M. C. 398—Channell, J.) reversed . . . . .	577	<b>London County Council v. General Steam Navigation Co., Ltd.</b> ((1907) 96 L. T. 57; 10 Asp. M. C. 340—Bray, J.) affirmed . . . . .	663
<b>Leonis Steamship Co., Ltd. v. Joseph Rank, Ltd. (No. 2)</b> ((1907) 24 T. L. R. 280; 13 Com. Cas. 161—Bigham, J.) affirmed . . . . .	577	<b>London Transport Co., Ltd. v. Bessler, Waechter &amp; Co., Ltd.</b> ((1907) 24 T. L. R. 133—C. A.) affirmed . . . . .	580
<b>Leslie v. Leslie</b> ((1835) Ll. & G. t. Sugden 1) distinguished.		<b>London United Tramways Act, 1900, In re</b> ([1906] 1 Ch. 534; 75 L. J. Ch. 223; 54 W. R. 328; 94 L. T. 608; 22 T. L. R. 286—Eady, J.) overruled on one point.	
<i>In re Crane, Adams v. Crane</i> . . . . .	698	<i>In re Thames Tunnel Act, 1900</i> . . . . .	96
<b>Lilley and Lilley &amp; Skinner, Ltd. v. London County Council</b> ((1907) 71 J. P. 437; 97 L. T. 306; 5 L. G. R. 1070) affirmed . . . . .	410	<b>"Longford, The"</b> ((1889) 14 P. D. 34; 58 L. J. P. 33; 60 L. T. 373; 37 W. R. 372; 6 Asp. M. C. 371—C. A.) followed.	496
<b>Liverpool and North Wales Steamship Co., Ltd. v. Mersey Trading Co., Ltd.</b> ([1908] 2 Ch. 460; 77 L. J. Ch. 658; 72 J. P. 385; 24 T. L. R. 712—Neville, J.) affirmed . . . . .	607	<i>"The Burns"</i> . . . . .	496
<b>Liverpool Corporation v. Peter Walker &amp; Son</b> ([1908] 1 K. B. 28; 77 L. J. K. B. 46; 71 J. P. 524; 97 L. T. 764—Div. Ct.) reversed . . . . .	321	<b>Lord Advocate v. Earl of Buchan</b> ([1907] S. C. 849) affirmed . . . . .	165

# LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
<b>Lord's Trustee v. Great Eastern Ry. Co.</b> ([1908] 2 K. B. 54; 77 L. J. K. B. 611; 98 L. T. 910; 24 T. L. R. 470; 52 Sol. Jo. 394; 15 Manson, 107— C. A.) reversed . . . . .	47	<b>Mansell v. The Valley Printing Co. and Rankine</b> ([1908] 1 Ch. 567; 77 L. J. Ch. 397; 98 L. T. 432; 24 T. L. R. 311—Eady, J.) affirmed . . . . .	120
<b>Loring v. Thomas</b> ((1861) 1 Dr. & Sm. 497— Kindersley, V.-C.) followed. <i>In re Lambert</i> . . . . .	692	<b>Mansergh v. Campbell</b> (1858) 28 L. J. Ch. 61; 3 De G. & J. 232— <i>Dictum</i> of Lord Chelmsford) followed. <i>Re Evans, Thomas v. Thomas</i> . . . . .	531, 699
<b>Lovell and Christmas v. Commissioners of Taxes</b> (26 N. Z. L. R. 625) reversed	179	<b>"Marpessa, The"</b> ([1906] P. 95; 75 L. J. P. 18; 54 W. R. 339; 94 L. T. 428; 10 Asp. M. C. 232—C. A.) affirmed	599
<b>Lucas and Chesterfield Gas and Water Co., In re</b> ([1908] 1 K. B. 571; 77 L. J. K. B. 374; 72 J. P. 76; 98 L. T. 37; 24 T. L. R. 229; 52 Sol. Jo. 173; 6 L. G. R. 150— Bray, J.) affirmed . . . . .	99	<b>Mattson, Andrew, In re</b> ((6 N. S. W. S. R. ii.) reversed <i>sub nom.</i> <i>Attorney-General for New South Wales v. Curator of Intestates' Estates</i> . . . . .	169
<b>Luckin v. Hamlin</b> ((1869) 21 L. T. 366; 18 W. R. 43) followed. <i>Neverson v. Seymour</i> . . . . .	47	<b>Maurice, In re</b> ((1896) 75 L. T. 415— North, J.) distinguished. <i>In re Brester</i> . . . . .	163
M.		<b>Mayall v. Higbey</b> ((1862) 1 H. & C. 148) applied. <i>Mansell v. The Valley Printing Co.</i> . . . . .	120
<b>Macbeth v. North and South Wales Bank</b> ([1908] 1 K. B. 13; 77 L. J. K. B. 19; 97 L. T. 677; 24 T. L. R. 5; 13 Com. Cas. 69—C. A.) affirmed . . . . .	25	<b>Mears v. Western Canada Pulp and Paper Co.</b> ([1905] 2 Ch. 353; 74 L. J. Ch. 353; 93 L. T. 150; 21 T. L. R. 599, 661; 12 Manson, 295—C. A.) applied. <i>In re National Motor Mail Coach Co., Ltd.</i> . . . . .	87
<b>Macdonald v. Owners of "The Banana"</b> ([1908] 2 K. B. 926; 24 T. L. R. 887; 25 Sol. Jo. 741—C. A.) fol- lowed. <i>Moore v. Manchester Liners, Ltd.</i> . . . . .	390	<b>Metropolitan Ry. Co. and Cosh, In re</b> ((1880) 13 Ch. D. 607; 49 L. J. Ch. 277; 44 J. P. 393; 42 L. T. 73; 28 W. R. 685—C. A.) applied. <i>In re Lancashire and Yorkshire Ry. Co. v. Earl of Derby.</i> . . . . .	98, 99
<b>Macfadyen, In re</b> ((1908) 99 L. T. 306; 52 Sol. Jo. 623—Bigham, J.) reversed . . . . .	35	<b>Midland Ry. Co. v. Myers, Rose &amp; Co.</b> ([1908] 2 K. B. 356; 77 L. J. K. B. 554; 24 T. L. R. 446; 52 Sol. Jo. 377— C. A.) affirmed . . . . .	504
<b>McIntosh v. Dun</b> (3 Com. L. R. 1134) reversed . . . . .	346	<b>Millar v. Taylor</b> ((1769) 4 Burr. 2307, 2396) applied. <i>Mansell v. The Valley Printing Co.</i> . . . . .	120
<b>M'Kinnell v. Robinson</b> ((1838) 3 M. & W. 434) distinguished. <i>Saxby v. Fulton</i> . . . . .	249	<b>Miller v. Hancock</b> ([1893] 2 Q. B. 177; 57 J. P. 758; 69 L. T. 214; 41 W. R. 578—C. A.) discussed. <i>Huggett v. Myers.</i> . . . . .	332
<b>MacVity v. Tranouth</b> (36 Can. S. C. R. 455) reversed . . . . .	175	<b>Mitchell v. Cantrill</b> ((1888) 37 Ch. D. 56; 57 L. J. Ch. 72; 36 W. R. 229; 58 L. T. 29) approved and followed. <i>Morgan v. Fear</i> . . . . .	193
<b>Magnolia Metal Co.'s Trade Marks, In re</b> ([1897] 2 Ch. 371; 66 L. J. Ch. 598; 76 L. T. 672—C. A.) followed. <i>In re Gestetner's Trade Mark</i> . . . . .	639	<b>Montgomerie &amp; Co. v. Haddington Corpora- tion</b> ([1908] S. C. 127—Ct. of Sess.) affirmed . . . . .	551
<b>Mallison v. Carr</b> ([1891] 1 Q. B. 48; 60 L. J. M. C. 34; 55 J. P. 102; 63 L. T. 459; 39 W. R. 270; 17 Cox, C. C. 220—Div. Ct.) followed. <i>Cork Rural District Council v. Walsh</i> 237, 238	238	<b>Moore, In re</b> ([1901] 1 Ch. 691; 70 L. J. Ch. 321; 149 W. R. 373—Buckley, J.) followed. <i>In re Orlebar</i> . . . . .	162
<b>Mangena v. Edward Lloyd, Ltd.</b> ((1908) 98 L. T. 640; 24 T. L. R. 610—Dar- ling, J.) reversed on the facts. . . . .	346	<i>In re Hadley.</i> . . . . .	162
<b>Mansell v. Griffin</b> ([1908] 1 K. B. 160; 72 J. P. 6; 98 L. T. 51; 24 T. L. R. 67—Div. Ct.) affirmed . . . . .	203		



# LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
<b>Morgan's Case</b> ((1884) 28 Ch. D. 620; 54 L. J. Ch. 765; 51 L. T. 623; 33 W. R. 209—Bacon, V. C.) applied. <i>In re British Building Stone Co., Ltd.</i> . . .	85	<b>Norwich Corporation and Norwich Electric Tramways Co., Ltd., <i>In re</i></b> ((1908) 72 J. P. 50; 97 L. T. 911; 6 L. G. R. 101—Bray, J.) affirmed . . .	647
<b>Morris and Bastert, Ltd. v. Loughborough Corporation</b> ((1907) 71 J. P. 10; 5 L. G. R. 269—Bigham, J.) reversed . . .	211	<b>Nugent v. Nugent</b> ([1907] 2 Ch. 293; 76 L. J. Ch. 614; 97 L. T. 279; 23 T. L. R. 660—Eady, J.) affirmed . . .	527
<b>Morse v. Martin</b> ((1865) 34 Beav. 500) followed. <i>In re Walker, M'Coll v. Bruce</i> . . .	468		O.
<b>Munro v. Henderson</b> ([1907] 1 I. R. 440—Barton, J.), affirmed . . .	679	<b>Oceanic Steamship Co. v. Faber</b> ((1906) 95 L. T. 607; 22 T. L. R. 527; 11 Com. Cas. 179; 10 Asp. M. C. 303—Walton, J.) affirmed . . .	312
<b>Musammat Surajnani v. Rabi Nath Ojha</b> (I. L. R. 25 All. 351) reversed. . .	181	<b>Ockleston v. Heap</b> ((1847) 1 De G. & Sm. 640) not followed. <i>In re Waidanis</i> . . .	653
	N.	<b>O'Connell, <i>In re</i></b> ([1903] 2 Ch. 574; 72 L. J. Ch. 709; 89 L. T. 166—Kekewich, J.) not followed. <i>Tremayne v. Rashleigh</i> . . .	558
<b>Nairn v. University Court of St. Andrews University</b> ([1908] S. C. 113—Ct. of Sess.) affirmed . . .	210	<b>Ogden v. Ogden</b> ([1907] P. 107; 76 L. J. P. 9; 96 L. T. 505; 23 T. L. R. 158—Deane, J.) affirmed . . .	285
<b>National Phonograph Co., Ltd. v. Edison-Bell Consolidated Phonograph Co.</b> ((1907) 76 L. J. Ch. 194; 96 L. T. 218; 23 T. L. R. 189—Joyce, J.) affirmed in part and reversed in part . . .	542	<b>Oliver v. Camberwell Borough Council</b> ((1904) 68 J. P. 165—Div. Ct.) discussed. <i>Wilson's Music and General Printing Co. v. Finsbury Borough Council</i> . . .	414
<b>Nelson Line (Liverpool), Ltd. v. James Nelson and Sons, Ltd.</b> ([1907] 1 K. B. 769; 76 L. J. K. B. 411; 96 L. T. 402; 23 T. L. R. 302; 12 Com. Cas. 210; 10 Asp. M. C. 390—C. A.) affirmed . . .	575	<b>Oppenheimer v. Attenborough &amp; Son</b> ([1907] 1 K. B. 510; 76 L. J. K. B. 177; 96 L. T. 501; 23 T. L. R. 182; 12 Com. Cas. 88—Channell, J.) affirmed . . .	10
<b>New Moss Colliery Co. v. Manchester Corporation</b> ([1906] 2 Ch. 564; 75 L. J. Ch. 772; 70 J. P. 409; 95 L. T. 277; 22 T. L. R. 808; 4 L. G. R. 1129—C. A.) affirmed . . .	667	<b>"Oravia, The"</b> ((1907) 96 L. T. 869; 23 T. L. R. 358; 10 Asp. M. C. 434—C. A.) affirmed . . .	591
<b>Nicholson v. Booth</b> ((1888) 57 L. J. M. C. 43; 52 J. P. 662; 58 L. T. 187; 16 Cox, C. C. 373—Div. Ct.) distinguished. <i>Pickering v. Willoughby</i> . . .	135	<b>Orlebar, <i>In re</i>; Wynter v. Orlebar,</b> ([1908] 1 Ch. 136; 77 L. J. Ch. 54; 98 L. T. 19; 24 T. L. R. 42—Neville, J.) followed. <i>In re Hadley</i> . . .	162
<b>Norman, <i>In re</i></b> ((1886) 16 Q. B. D. 673; 55 L. J. Q. B. 202; 54 L. T. 143; 34 W. R. 313—C. A.) followed. <i>In re Hirst and Capes</i> . . .	614	<b>Osborne v. Amalgamated Society of Railway Servants</b> ((1908) 77 L. J. Ch. 759; 24 T. L. R. 827; W. N. 188—Neville, J.) reversed on the main point . . .	636
<b>North Manchester Overseers v. Winstanley</b> ([1907] 1 K. B. 27; 76 L. J. K. B. 33; 71 J. P. 48; 95 L. T. 796; 23 T. L. R. 35; 5 L. G. R. 7—Div. Ct.) reversed . . .	520	<b>Osborne v. Bradley</b> ([1903] 2 Ch. 446; 89 L. T. 11—Farwell, J.) distinguished. <i>Elliston v. Reacher</i> . . .	547
<b>North Metropolitan Tramways, Ltd. v. Leyton Urban District Council</b> ((1907) 71 J. P. 536; 98 L. T. 136; 6 L. G. R. 1—Div. Ct.) affirmed . . .	649	<b>O'Sullivan, <i>Re</i></b> ((1892) 66 L. T. 619) discussed. <i>In re Johnson, Ex parte Wright</i> . . .	33, 545
<b>North Staffordshire Colliery Owners' Association v. North Staffordshire Ry. Co. and Others</b> ([1908] 1 K. B. 771; 77 L. J. K. B. 448; 24 T. L. R. 377—Ry. & Canal Com.) affirmed . . .	505	<b>Owen v. Cronk</b> ([1895] 1 Q. B. 265; 64 L. J. Q. B. 288; 2 Manson, 115—C. A.) considered. <i>Plumpton and Another v. Buckinshaw</i> . . .	365

# LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
<b>Owen v. Faversham Corporation</b> ((1908) 72 J. P. 404—Eve, J.) affirmed . . .	446	<b>Powell v. Browne</b> ((1907) 97 L. T. 167; 23 T. L. R. 604—Joyce, J.) reversed . . .	436
P.		<b>Powell v. Fall</b> ((1880) 5 Q. B. D. 597; 49 L. J. Q. B. 428; 45 J. P. 156; 43 L. T. 562) followed.	
<b>Padam Lal v. Tek Singh</b> (I. L. R. All. 217) approved.		<i>Gunter v. James</i> . . . . .	447
<i>Musammatt Sarajmani v. Rabi Nath Ojha</i> . . . . .	180, 181	<b>Powell v. Knight</b> ((1878) 42 J. P. 597; 38 L. T. 607; 26 W. R. 721) followed.	
<b>Palace Shipping Co. v. Caine</b> ([1907] 1 K. B. 670; 76 L. J. K. B. 292; 96 L. T. 410; 23 T. L. R. 203; 12 Com. Cas. 96; 10 Asp. M. C. 380—C. A.) affirmed . . . . .	572	<i>Hooker v. Gray</i> . . . . .	13
<b>Palmer v. Blackburn</b> ((1822) 1 Bing. 61) applied.		<b>Power, In re</b> ([1907] 1 I. R. 51) followed.	
<i>United States Shipping Co. v. Empress Assurance Corporation, Ltd.</i> . . . . .	313	<i>Tremayne v. Rashleigh</i> . . . . .	558
<b>Parker v. Bournemouth Corporation</b> ((1902) 66 J. P. 440) distinguished.		<b>Power, In re</b> ([1901] 2 Ch. 659; 70 L. J. Ch. 778; 85 L. T. 400; 49 W. R. 678; 17 T. L. R. 709—Byrne, J.) not followed.	
<i>Williams v. Weston-super-Mare Urban District Council</i> . . . . .	355	<i>In re Orlebar</i> . . . . .	162
<b>Parkers, In re</b> ((1887) 19 Q. B. D. 84; 56 L. J. Q. B. 338; 57 L. T. 198; 35 W. R. 566; 4 Manson, 35—Cave, J.) followed.		<i>In re Hadley</i> . . . . .	162
<i>In re Macfadyen</i> . . . . .	35	<b>Pretoria-Pietersburg Ry. Co., Ltd. v. Elgood</b> ((1906) 95 L. T. 468—Walton, J.) reversed . . . . .	296
<b>Parkin v. South Hetton Coal Co.</b> ((1907) 97 L. T. 98; 23 T. L. R. 408—Div. Ct.) affirmed . . . . .	405	<b>Price, In re</b> ([1900] 1 Ch. 442; 69 L. J. Ch. 225; 82 L. T. 79; 48 W. R. 373—Stirling, J.) followed.	
<b>Pearson v. Dublin Corporation</b> ([1907] 2 I. R. 82—C. A.) reversed . . . . .	51, 496	<i>In re Walker, McColl v. Bruce</i> . . . . .	468
<b>Pett v. Fellows</b> ((1733) 1 Swans. 561 (n)) distinguished.		<b>Price's Patent Candle Co., Ltd. v. London County Council</b> (72 J. P. 315; 24 T. L. R. 607—Neville, J.) affirmed	447
<i>In re Crane</i> . . . . .	698	<b>Prince Albert v. Strange</b> ((1849) 2 De G. & Sm. 652, 695) applied.	
<b>Phillips, In re</b> ((1888) 36 W. R. 567—C. A.) followed.		<i>Mansell v. The Valley Printing Co.</i> . . . . .	120
<i>In re Myers</i> . . . . .	36	<b>Pyman v. Dreyfus</b> ((1889) 24 Q. B. D. 152; 59 L. J. Q. B. 13; 61 L. T. 724; 38 W. R. 447; 6 Asp. M. C. 444—Div. Ct.) followed.	
<b>Pontifex v. Farnham</b> ((1893) 62 L. J. Q. B. 344; 41 W. R. 238—Div. Ct.) doubted.		<i>Leonis Steamship Co., Ltd. v. Joseph Rank, Ltd.</i> . . . . .	577
<i>Bake v. French</i> . . . . .	612	<b>Pyman v. Martin</b> ((1907) 22 T. L. R. 834—Phillimore, J.) affirmed . . . . .	315
<b>Poole v. National Bank of China, Ltd.</b> ([1907] A. C. 229; 76 L. J. Ch. 458; 96 L. T. 889; 23 T. L. R. 567; 14 Manson, 218—H. L.) applied.		Q.	
<i>In re Jewish Colonial Trust, Ltd.</i> . . . . .	82	<b>Quarrier v. Colston</b> ((1844) 1 Phillips, 147) followed.	
<b>Portsmouth Corporation v. Hall</b> ((1907) 71 J. P. 299; 97 L. T. 43; 23 T. L. R. 449; 5 L. G. R. 536—Joyce, J.) reversed . . . . .	271	<i>Saebv v. Fulton</i> . . . . .	249
<b>Postmaster-General v. National Telephone Co., Ltd.</b> ((1907) 76 L. J. Ch. 350; 71 J. P. 221; 96 L. T. 632; 23 T. L. R. 401—Eady, J.) reversed . . . . .	627	<b>Queen of the River Steamship Co. v. Thames Conservators</b> ((1906) 95 L. T. 104; 22 T. L. R. 419; 11 Com. Cas. 130—Kennedy, J.) affirmed . . . . .	663
<b>Poulton v. Adjustable Cover and Boiler Block Co., Ltd.</b> ((1908) 77 L. J. Ch. 586; 24 T. L. R. 717—Parker, J.) affirmed . . . . .	328, 455	R.	
		<b>R. v. Bradlaugh</b> ((1883) 15 Cox, 222 (n) — <i>Dictum</i> of Coleridge, J.) not followed.	
		<i>R. v. Kinghorn and Another</i> . . . . .	215

# LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
<b>R. v. Carson-Roberts</b> ([1907] 2 K. B. 878 ; 76 L. J. K. B. 1113 ; 71 J. P. 288 ; 96 L. T. 733 ; 23 T. L. R. 491 ; 5 L. G. R. 1017—Div. Ct.) affirmed . . .	354	<b>R. v. Ramsey</b> ((1883) 1 Cab. & E. 126 ; 15 Cox, C. C. 231) discussed. <i>R. Boulter</i> . . . . .	134
<b>R. v. Cox</b> ((1844) 1 C. & K. 494) doubted. <i>R. v. Stride</i> . . . . .	140	<b>R. v. Rothwell</b> ((1871) 12 Cox, C. C. 145) followed. <i>R. v. Jones</i> . . . . .	143
<b>R. v. Fisher.</b> <i>Times</i> , January 31st, 1889, dissented from. <i>R. v. Sheehan</i> . . . . .	128	<b>R. v. Rough</b> ((1779) 2 East, P. C. 607) dis- tinguished. <i>R. v. Stride</i> . . . . .	140
<b>R. v. Hazlehurst</b> ((1887) 51 J. P. 645—Div. Ct.) followed. <i>R. v. Carson-Roberts</i> . . . . .	353	<b>R. v. Russell (Lord John)</b> ((1839) 7 Dowl. P. C. 693) explained. <i>R. v. Daye</i> . . . . .	215
<b>R. v. Helangh (Inhabitants), Times</b> , April 18th, 1863, not followed. <i>Raddcliffe v. Marsden Urban District Council</i> . . . . .	262	<b>R. v. Southwark Corporation; Ex parte South Eastern and Chatham Ry. Co.'s Committee</b> ((1908) 25 T. L. R. 49—Div. Ct.) affirmed . . . . .	512
<b>R. v. Leigh Rural District Council</b> ([1898] 1 Q. B. 836 ; 67 L. J. Q. B. 562 ; 62 J. P. 355 ; 78 L. T. 604 ; 46 W. R. 471—C. A.) followed. <i>Croydon Corporation v. Croydon Rural District Council</i> . . . . .	511	<b>R. v. Thornborn</b> ((1849) 13 J. P. 459 ; 1 Den. C. C. 387) discussed. <i>R. v. Mortimer</i> . . . . .	137
<b>R. v. Local Government Board, Ex parte South Stoneham Union</b> ([1908] 1 K. B. 368 ; 77 L. J. K. B. 820 ; 72 J. P. 219 ; 99 L. T. 69 ; 24 T. L. R. 463, 502—C. A.) reversed . . . . .	463	<b>R. v. Tipton</b> ((1842) 6 J. P. 568 ; 3 Q. B. 215) overruled. <i>West Ham Union v. Edmonton Union</i> . . . . .	465
<b>R. v. Local Government Board; Ex parte Street</b> ((1907) 71 J. P. 297 ; 96 L. T. 651 ; 5 L. G. R. 844—C. A.) re- versed. <i>Sub nom. Local Government Board v. Street</i> . . . . .	270	<b>Raglan Highway Board v. Monmouth Steam Co.</b> ((1881) 46 J. P. 598—Div. Ct.) explained. <i>Geirionydd Rural District Council v. Green</i> . . . . .	263
<b>R. v. London JJ.</b> ((1890) 25 Q. B. D. 357 ; 59 L. J. M. C. 146 ; 55 J. P. 56—Div. Ct.) applied. <i>R. v. Wright, Ex parte Bradford Cor- poration</i> . . . . .	371	<b>Raven v. Waite</b> ((1818) 1 Swans. 553, 559) followed. <i>In re Crane ; Adams v. Crane</i> . . . . .	698
<b>R. v. London JJ.; Ex parte South Metropolitan Gas. Co.</b> ((1907) 71 J. P. 476 ; 97 L. T. 716 ; 23 T. L. R. 726 ; 5 L. G. R. 1064—Div. Ct.) affirmed . . . . .	367	<b>Rebbbeck, In re</b> ((1894) 42 W. R. 473) dis- tinguished. <i>In re Henson</i> . . . . .	221, 696
<b>R. v. Martin</b> ((1832) 5 C. & P. 128) approved and followed. <i>R. v. Dyson</i> . . . . .	142	<b>Reed v. Franks</b> ((1900) 16 T. L. R. 347— Darling, J.) overruled. <i>Pettitt v. Lodge and Harper</i> . . . . .	46
<b>R. v. Marylebone County Court Judge, and Great Western Ry. Co., Ex parte Phillips</b> ([1907] 2 K. B. 664 ; 76 L. J. K. B. 1003 ; 36 L. T. 802 ; 23 T. L. R. 541—C. A.) reversed <i>sub nom.</i> <i>Great Western Ry. Co. v. Phillips &amp; Co.</i> . . . . .	503	<b>Rees. In re</b> ((1889) 60 L. T. 260— Kekewich, J.) followed. <i>In re Abrahams</i> . . . . .	223
<b>R. v. Merchant Taylors Co.</b> ((1831) 2 B. & Ad. 115) followed. <i>Bank of Bombay v. Saliman Sanji</i> . . . . .	120	<b>Rees v. De Bernardy</b> ([1896] 2 Ch. 437 ; 65 L. J. Ch. 656 ; 74 L. T. 585 ; 12 T. L. R. 412—Romer, J.) followed. <i>Wedgerfield v. De Bernardy</i> . . . . .	4
		<b>Reindeer Steamship Co., Ltd. v. Forslind and Son</b> ((1907) 24 T. L. R. 369 ; 13 Com. Cas. 184—Bigham, J.) re- versed . . . . .	582
		<b>Reney v. Kirkcudbright Magistrates</b> ([1892] A. C. 264 ; 61 L. J. P. C. 23 ; 67 L. T. 474—H. L. Sc.) followed. <i>The East London Harbour Board v. The Caledonia Landing, Shipping, and Salvage Co., Ltd., and the Colonial Fisheries Co., Ltd.</i> . . . . .	604



# LIST OF CASES AFFIRMED, REVERSED, ETC.

COL.	COL.
<b>Reynolds v. Ashby &amp; Co.</b> ([1904] A. C. 456 ; 73 L. J. K. B. 946 ; 91 L. T. 607 ; 53 W. R. 129 ; 20 T. L. R. 766— H. L.) followed.	<b>Salmon and Quinn v. Axtens, Ltd.</b> ((1908) 25 T. L. R. 164 ; 53 Sol. Jo. 150 ; [1908] W. N. 254—Warrington, J.) reversed. . . . . 80
<i>Crossley Bros. v. Lee</i> . . . . . 187	<b>Sampson v. Easterby</b> ((1829) 9 B. & C. 505 ; (1830) 6 Bing. 644) distinguished.
<b>Rhondda Urban District Council v. Taff Vale Ry. Co.</b> ([1907] 1 K. B. 739 ; 76 L. J. K. B. 486 ; 71 J. P. 189 ; 96 L. T. 633 ; 5 L. G. R. 395— Phillimore, J.) varied . . . . . 267	<i>Dewar v. Goodman</i> . . . . . 342
<b>Richmond Hill Steamship Co. v. Trinity House Corporation</b> ([1896] 2 Q. B. 134 ; 65 L. J. Q. B. 561 ; 75 L. T. 8 ; 45 W. R. 6—C. A.) discussed. *	<b>Samuel Brothers, Ltd. v. Whetherly</b> ([1907] 1 K. B. 709 ; 76 L. J. K. B. 357 ; 96 L. T. 552 ; 23 T. L. R. 280— Walton, J.) affirmed . . . . . 540
<i>Cairn Line v. Trinity House</i> . . . . . 607	<b>Sarpy v. Holland</b> ([1908] 1 Ch. 443 ; 77 L. J. Ch. 256 ; 24 T. L. R. 231— Neville, J.) reversed on one point . 119
<b>Rimmer v. Webster</b> ([1902] 2 Ch. 163 ; 71 L. J. Ch. 561 ; 86 L. T. 491 ; 50 W. R. 517 ; 18 T. L. R. 548— Farwell, J.) discussed.	<b>Schmidt v. Royal Mail Steamship Co.</b> ((1876) 45 L. J. Q. B. 646) followed.
<i>Burgiss and Others v. Constantine</i> . 570	<i>Greenshields, Cowie &amp; Co. v. Stephens &amp; Sons</i> . . . . . 314
<b>Ripley v. Paper Bottle Co.</b> ((1887) 57 L. J. Ch. 327—Chitty, J.) distinguished.	<b>Searle, In re</b> ([1900] 2 Ch. 829 ; 69 L. J. Ch. 712 ; 83 L. T. 364 ; 49 W. R. 44—Kekewich J.) followed.
<i>Lamb v. Sambas Rubber and Gutta Percha Co., Ltd.</i> . . . . . 86	<i>In re Oliver</i> . . . . . 695
<b>Roberts v. Walkers</b> ((1830) 1 Russ. & My. 752) applied.	<b>Sebright's Estates, In re</b> ((1886) 33 Ch. D. 429). <i>Dictum</i> of North, J. not followed.
<i>In re Spencer Cooper</i> . . . . . 161, 696	<i>In re Dickin and Kelsall's Contract</i> . 559
<b>Robertson v. Allan Bros.</b> ((1908) 77 L. J. K. B. 1072 ; 98 L. T. 821—C. A.) distinguished.	<b>Selwyn v. Garfitt</b> ((1888) 38 Ch. D. 273 ; 57 L. J. Ch. 609 ; 59 L. T. 233 ; 36 W. R. 513—C. A.) distinguished.
<i>Moore v. Manchester Liners, Ltd.</i> . . 390	<i>Barker v. Illingworth</i> . . . . . 436
<b>Roby, In re ; Howlett v. Newington</b> ([1907] 2 Ch. 84 ; 74 L. J. Ch. 454 ; 97 L. T. 173—Neville, J.) affirmed . 688	<b>Seymour v. Vernon</b> ((1852) 16 Jur. 189) discussed.
<b>Rose v. Rose</b> ((1882, 3) 7 P. D. 225 ; 8 P. D. 98 ; 51 L. J. P. 79 ; 47 L. T. 49 ; 30 W. R. 736) distinguished.	<i>In re Quicke, Poltimore v. Quicke</i> . 307
<i>Norman v. Norman</i> . . . . . 282	<b>Sharp, In re ; Maddison v. Gill</b> ([1908] 1 Ch. 372 ; 77 L. J. Ch. 251 ; 98 L. T. 234—Joyce, J.) affirmed . 681
<b>Rowe v. Gough</b> ([1908] 1 I. R. 402—C. A.) reversed . . . . . 326	<b>Shaw, In re ; Robinson v. Shaw</b> ([1894] 2 Ch. 573 ; 63 L. J. Ch. 770 ; 71 L. T. 729 ; 43 W. R. 43—North J.) followed.
<b>Rowe's Estate, In re</b> ([1907] 1 I. R. 380) reversed . . . . . 326	<i>Ebbenn v. Fowler</i> . . . . . 554
<b>Rugby Portland Cement Co., Ltd. v. London and North Western Ry. Co.</b> ([1908] 1 K. B. 925 ; 72 J. P. 116 ; 24 T. L. R. 341—Bray, J.) reversed . 98	<b>Sheffield Corporation v. Barclay</b> ([1905] A. C. 392 ; 74 L. J. K. B. 747 ; 69 J. P. 385 ; 54 W. R. 49 ; 93 L. T. 83 ; 21 T. L. R. 642—H. L.) followed.
<b>Runciman &amp; Co. v. Smyth &amp; Co.</b> ((1904) 20 T. L. R. 625) <i>dicta</i> in not followed.	<i>Bank of England v. Cutler</i> . . . . . 27, 89
<i>Morrison Tinplate Co. v. Brooker, Dore &amp; Co.</i> . . . . . 19, 122	<b>Sidebotham v. Holland</b> ([1895] 1 Q. B. 378 ; 64 L. J. Q. B. 200 ; 72 L. T. 62 ; 43 W. R. 228—C. A.) followed.
S.	<i>Wilkins v. McGinity</i> . . . . . 335
<b>Salaman, In re ; De Pass v. Sonnenthal</b> ([1907] 2 Ch. 46 ; 76 L. J. Ch. 419 ; 96 L. T. 809—Kekewich, J.) reversed in part . . . . . 690	<b>Sidney, In re ; Hingeston v. Sidney</b> ([1908] 1 Ch. 126 ; 77 L. J. Ch. 51 ; 24 T. L. R. 34—Eady, J.) affirmed . 60
	<b>Simonin v. Mallac</b> ((1860) 2 Sw. & Tr. 67) followed.
	<i>Ogden v. Ogden</i> . . . . . 285

# LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
<b>Simper v. Foley</b> ((1862) 5 L. T. 669 : 2 J. & H. 455) considered.		<b>Stead v. Newport Union Assessment Committee</b> ([1907] 2 K. B. 460; 76 L. J. K. B. 753; 71 J. P. 263; 97 L. T. 413; 5 L. G. R. 892—C. A.) reversed . . . . .	517
<i>Hyman v. Van Den Bergh</i> . . . . .	193	<b>Steed v. Preece</b> ((1874) L. R. 18 Eq. 192; 43 L. J. Ch. 687) followed.	
<b>Singleton v. Ellison</b> ([1895] 1 Q. B. 607; 64 L. J. M. C. 123; 59 J. P. 119; 72 L. T. 236; 43 W. R. 426; 18 Cox, C. C. 79—Div. Ct.) considered.		<i>Burgess v. Booth</i> . . . . .	301
<i>Durose v. Wilson</i> . . . . .	137	<b>Stribling v. Halse</b> ((1886) 16 Q. B. D. 246; 55 L. J. Q. B. 15; 49 J. P. 727; 54 L. T. 268—Div. Ct.) followed.	
<b>Sirdar Gurdial Singh v. Rajah of Faridkote</b> ([1894] A. C. 670—P. C.) followed.		<i>Lasky v. Michelmores</i> . . . . .	210
<i>Emanuel and Others v. Symon</i> . . . . .	103	<b>Strong v. Bird</b> ((1874) L. R. 18 Eq. 315; 43 L. J. Ch. 814; 30 L. T. 745; 22 W. R. 788—Jessel, M. R.) followed and applied.	
<b>Slade v. Chaine</b> ((1907) 97 L. T. 192—Kekewich, J.) affirmed . . . . .	656	<i>In re Stewart, Stewart v. McLaughlin</i> . . . . .	217
<b>Smith v. Claxton</b> ((1820) 4 Madd. 484) applied.		<b>Stroud v. Gwyer</b> ((1860) 28 Beav. 130; 2 L. T. 400) followed.	
<i>In re Spencer Cooper</i> . . . . .	161, 696	<i>Slade v. Chaine</i> . . . . .	656
<b>Smith v. Humble</b> ((1854) 18 J. P. 760; 15 C. B. 321) followed.		<b>Stroughill v. Anstey</b> ((1852) 1 P. M. & G. 635) applied.	
<i>Mansfield v. Relf</i> . . . . .	330, 336	<i>In re Henson</i> . . . . .	221, 431, 697
<b>Smith v. Standard Steam Fishing Company</b> [1906] 2 K. B. 275; 75 L. J. K. B. 640; 54 W. R. 582; 95 L. T. 42; 22 T. L. R. 578—C. A.) followed.		<b>Sutcliffe v. Sowerby (Surveyors)</b> ((1859) 1 L. J. (N. S.) 7) followed.	
<i>Morgan v. Tydril Engineering and Ship Repairing Co.</i> . . . . .	395	<i>Radclyffe v. Marsden Urban District Council</i> . . . . .	262
<b>Smith's Dock Co., Ltd. v. Tynemouth Corporation</b> ([1908] 1 K. B. 315; 77 L. J. K. B. 175; 72 J. P. 64; 24 T. L. R. 127; 6 L. G. R. 223—Div. Ct.) affirmed . . . . .	510	<b>Swansea Union Assessment Committee v. Swansea Harbour Trustees</b> ((1906) 70 J. P. 305; 94 L. T. 627; 22 T. L. R. 433; 4 L. G. R. 882—C. A.) affirmed . . . . .	522
<b>Sottomayor v. De Barros</b> ((1879) 5 P. D. 94; 49 L. J. P. 1) followed.			T.
<i>Ogden v. Ogden</i> . . . . .	285	<b>Taff Vale Ry. Co. v. Cardiff Union Assessment Committee</b> ((1906) 70 J. P. 534; 95 L. T. 455; 4 L. G. R. 932—Bigham, J.) affirmed . . . . .	517
<b>South Eastern Ry. Co. and South Eastern and Chatham Ry. Co.'s Managing Committee v. National Telephone Co., Ltd.</b> ([1908] 2 Ch. 50; 77 L. J. Ch. 679; 99 L. T. 339; 24 T. L. R. 579—Warrington, J.) affirmed . . . . .	628	<b>Tasker &amp; Sons, In re</b> ([1905] 2 Ch. 587; 74 L. J. Ch. 643; 54 W. R. 65; 93 L. T. 195; 21 T. L. R. 736; 12 Manson, 302—C. A.) followed.	
<b>Speyer Bros. v. Inland Revenue</b> ([1907] 1 K. B. 246; 76 L. J. K. B. 186; 96 L. T. 70; 23 T. L. R. 145—C. A.) affirmed . . . . .	536	<i>The London General Investment Trust, Ltd. v. The Russian Petroleum and Liquid Fuel Co., Ltd.</i> . . . . .	74
<b>Spiers v. Hunt</b> ([1908] 1 K. B. 720; 77 L. J. K. B. 321; 98 L. T. 27; 24 T. L. R. 183—Phillimore, J.) approved and followed.		<b>Tate v. Fullbrook</b> ((1907) 33 T. L. R. 715—Phillimore, J.) reversed . . . . .	117
<i>Wilson v. Curuley</i> . . . . .	112	<b>Tenby Corporation v. Mason</b> ((1907) 72 J. P. 15; 97 L. T. 777; 24 T. L. R. 123—Kekewich, J.) affirmed . . . . .	357
<b>Standard Bank of South Africa v. Heydenrych</b> (16 Cape Times L. R. 85) affirmed . . . . .	171	<b>Thompson's Estates, In re</b> ([1907] 1 Ir. 311—C. A.) reversed, <i>sub nom.</i>	
<b>Stangoe v. Slatter</b> ((1896) 60 J. P. 342—Div. Ct.) distinguished.		<i>De Vesci v. O'Connell</i> . . . . .	529
<i>Kyle v. Dunsdon</i> . . . . .	671	<b>Tillmanns &amp; Co. v. SS. Knutsford, Ltd.</b> , [1908] 2 K. B. 385; 77 L. J. K. B. 778; 24 T. L. R. 454; 13 Com. Cas. 244—C. A.) affirmed . . . . .	574

# LIST OF CASES AFFIRMED, REVERSED, ETC.

COL.	V.	COL.
<b>Tiverton and North Devon Ry. Co. v. Loosemore</b> ([1884] 9 App. Cas. 480; 53 L. J. Ch. 812; 48 J. P. 372; 50 L. T. 637; 32 W. R. 929—H. L.) followed.		<b>Venn and Furze's Contract, <i>In re</i></b> ([1894] 2 Ch. 101; 63 L. J. Ch. 303; 70 L. T. 312; 42 W. R. 440—Stirling, J.) applied.
<i>Great Western Ry. Co. v. Midland Ry. Co.</i> . . . . . 502, 630		<i>In re Henson, Chester v. Henson</i> 222, 431, 697
<b>Toal v. North British Ry. Co.</b> ([1908] S. C. 48—Ct. of Sess.) reversed . . . 440	W.	
<b>Townshend v. Harrowby</b> ((1858) 27 L. J. Ch. 553) followed.		<b>Waddle v. Sunderland Union Assessment Committee</b> ([1906] 2 K. B. 899; 76 L. J. K. B. 16; 71 J. P. 1; 95 L. T. 784; 23 T. L. R. 7; 4 L. G. R. 1155—Div. Ct.) affirmed . . . . . 517
<i>Tremayne v. Rashleigh</i> . . . . . 558		<b>Wagstaff, <i>In re</i>; Wagstaff v. Jalland</b> ([1907] 2 Ch. 35; 76 L. J. Ch. 369; 96 L. T. 605; 23 T. L. R. 426—Kekewich J.) affirmed . . . . . 685
<b>Train v. Clapperton</b> ([1907] S. C. 517—Ct. of Sess.) affirmed . . . . . 653		<b>Wakefield Corporation v. Wakefield District Light Ry. Co.</b> ([1907] 2 K. B. 256; 76 L. J. K. B. 634; 71 J. P. 254; 96 L. T. 622; 23 T. L. R. 404; 5 L. G. R. 595—C. A.) affirmed . . . 510
<b>Trask v. Wood</b> ((1839) 4 My. & Cr. 324) applied.		— Applied.
<i>In re Hudson, Cassels v. Hudson</i> . . . 115		<i>Attorney-General v. Yorkshire (Woollen District) Electric Tramways, Ltd.</i> . 533
<b>Treasure, <i>In re</i></b> ([1900] 2 Ch. 648; 69 L. J. Ch. 757; 83 L. T. 142; 48 W. R. 696; 16 T. L. R. 542—Kekewich, J.) not followed.		<b>Waterhouse, <i>In re</i>; Waterhouse v. Riley</b> ((1907) 96 L. T. 688—Joyce, J.) affirmed . . . . . 467
<i>In re Orlebar</i> . . . . . 162		— Applied.
<i>In re Hadley</i> . . . . . 162		<i>In re Lane, Belli v. Lane</i> . . . . . 467
<b>Trenchard, <i>In re</i></b> ([1905] 1 Ch. 82; 74 L. J. Ch. 135; 92 L. T. 265; 53 W. R. 235—Warrington, J.) distinguished.		<b>Watson v. Home</b> ((1827) 7 B. & C. 285) followed.
<i>In re Spencer Cooper</i> . . . . . 161, 696		<i>Mansfield v. Relf</i> . . . . . 330, 336
<b>Tunnicliffe and Hampson, Ltd. v. West Leigh Colliery Co., Ltd.</b> ([1906] 2 Ch. 22; 75 L. J. Ch. 512; 94 L. T. 715; 22 T. L. R. 521—C. A.) reversed . . 160		<b>Watts v. Stevens</b> ([1906] 2 K. B. 323; 75 L. J. K. B. 828; 70 J. P. 418; 95 L. T. 200; 22 T. L. R. 622; 4 L. G. R. 821—Div. Ct.) discussed.
<b>Turnbull &amp; Co. v. Duval</b> ([1902] A. C. 429; 71 L. J. P. C. 84; 87 L. T. 154; 18 T. L. R. 521—P. C.) followed.		<i>Evans v. Weatheritt</i> . . . . . 235
<i>Chaplin &amp; Co., Ltd. v. Brammall</i> 114, 212		<b>Wedgefield v. De Bernardy</b> ((1908) 24 T. L. R. 497—Parker, J.) affirmed. 4
<b>Tussaud v. Tussaud</b> ((1890) 44 Ch. D. 678; 59 L. J. Ch. 631; 62 L. T. 633; 38 W. R. 503—Stirling, J.) discussed and followed.		<b>Wednesbury Corporation v. Lodge Holes Colliery Co., Ltd.</b> ([1907] 1 K. B. 78; 76 L. J. K. B. 68; 71 J. P. 73; 97 L. T. 815; 23 T. L. R. 80; 5 L. G. R. 43—C. A.) reversed . . . 262
<i>The Fine Cotton Spinners' and Doublers' Association, Ltd. and John Cash and Sons, Ltd. v. Harwood, Cash &amp; Co., Ltd.</i> . . . . . 632		<b>Weir and Others v. Brown and Others</b> ([1907] S. C. 185—Ct. of Sess.) affirmed . . 62
<b>Tyrell v. Panton</b> ([1904] P. 151; 70 L. T. 453; 42 W. R. 343—C. A.) applied.		<b>Wells v. Allott</b> ([1904] 2 K. B. 842; 73 L. J. K. B. 1023; 20 T. L. R. 799—C. A.) explained and distinguished.
<i>Finny v. Goret</i> . . . . . 675		<i>Lazarus v. Smith</i> . . . . . 428, 474
U.		<b>Wentworth v. Wentworth</b> ([1900] A. C. 163; 69 L. J. P. C. 13; 81 L. T. 682—P. C.) considered and explained.
<b>United States Shipping Co. v. Empress Assurance Corporation, Ltd.</b> ([1907] 1 K. B. 259; 76 L. J. K. B. 225; 23 T. L. R. 137; 12 Com. Cas. 142—Channell, J.) affirmed . . . . . 313		<i>In re Oliver, Wilson v. Oliver</i> . . . 695
<b>University College of North Wales v. Taylor</b> ([1907] P. 229; 76 L. J. P. 49; 96 L. T. 587; 23 T. L. R. 395—Barnes, Pres.) reversed . . . . . 677		<b>West v. Bristol Tramways Co., Ltd.</b> ((1908) 72 J. P. 145; 24 T. L. R. 299; 52 Sol. Jo. 264—Div. Ct.) affirmed . . 648
<b>Uskmoor, The</b> ([1902] P. 250; 18 T. L. R. 727) approved.		
<i>The Anselm</i> . . . . . 492		



# LIST OF CASES AFFIRMED, REVERSED, ETC.

		COL.			COL.
<b>West v. Lawday</b> ((1865) 11 H. L. C. 375) considered.			<b>Winslowe v. Bushey Urban District Council</b> ((1908) 72 J. P. 64—Coleridge, J.) reversed		439
<i>In re Bocket</i>		679	<b>Winter's Case</b> ((1572) 3 Dyer, 308 (b)) followed.		
<b>Western v. Kensington Assessment Committee</b> ([1907] 2 K. B. 323; 76 L. J. K. B. 790; 71 J. P. 306; 97 L. T. 215; 5 L. G. R. 666—Div. Ct.) affirmed.		513	<i>Piggott v. Middlesex County Council</i>		338, 343
<b>Westminster Corporation v. Gordon Hotels, Ltd.</b> ([1907] 1 K. B. 910; 76 L. J. K. B. 520; 72 J. P. 201; 98 L. T. 681; 24 T. L. R. 387; 5 L. G. R. 545—C. A.) affirmed		373, 416	<b>Wood Green Urban District Council v. Joseph</b> ([1907] 1 K. B. 182; 76 L. J. K. B. 173; 71 J. P. 89; 96 L. T. 176; 23 T. L. R. 126; 5 L. G. R. 322—C. A.) affirmed		563
<b>West Riding Rivers Board v. Butterworth &amp; Co.</b> ((1908) 72 J. P. 193; 98 L. T. 789; 6 L. G. R. 634—C. A.) affirmed		662	<b>Woodruff v. Attorney-General for Ontario</b> (15 Ont. L. R. 416) reversed		175
<b>Weston's Settlement, In re; Neeves v. Weston</b> ([1906] 2 Ch. 620; 95 L. T. 581—Buckley, J.) applied.			<b>Wright v. Marquess of Zetland</b> ((1907) 23 T. L. R. 709—Lawrence, J.) affirmed		110
<i>Wrigley v. Lowndes</i>		469	<b>Wrightson, In re</b> ([1904] 2 Ch. 95; 73 L. J. Ch. 742; 90 L. T. 748—C. A.) explained.		
<b>Werderman v. Société Générale d'Electricité</b> ([1881] 19 Ch. D. 246; 45 L. T. 574; 30 W. R. 33—C. A.) applied.			<i>White v. Summers</i>		699
<i>Dansk Rekydrippel Syndicate v. Snell</i>		454	<b>Wye Valley Ry. Co. v. Hawes</b> ((1880) 16 Ch. D. 489; 50 L. J. Ch. 225; 43 L. T. 715; 29 W. R. 177—C. A.) discussed.		
<b>Wheeler v. Sheer</b> ((1730) Mod. 301) followed.			<i>Furness, Withy &amp; Co., Ltd. v. Pickering</i>		477
<i>In re Roby; Howlett v. Newington</i>		182, 688	Y.		
<b>Whitechapel Board of Works v. Crow</b> ((1901) 65 J. P. 549; 84 L. T. 595—Div. Ct.) followed.			<b>Yangtze Insurance Association v. Indemnity Mutual Marine Assurance Co.</b> ([1908] 1 K. B. 910; 77 L. J. K. B. 392; 24 T. L. R. 381; 52 Sol. Jo. 315—Bigham, J.) affirmed		318
<i>County of London Electric Supply Co., Ltd. v. Perkins</i>		412	<b>Yolland, Husson and Birkett, Ltd., In re; Leicester v. The Co.</b> ([1907] 2 Ch. 471—Warrington, J.) affirmed		72
<b>Whitehouse v. Pickett</b> ([1908] S. C. 218—Ct. of Sess.) affirmed		304	— ([1908] 1 Ch. 152; 77 L. J. Ch. 43; 97 L. T. 824; 14 Manson, 346—C. A.) applied.		
<b>Wickham v. Hawkes</b> ((1840) 7 M. & W. 631) followed.			<i>Onward Steamship Co. v. Hopwood</i>		73
<i>Fitzhardinge (Lord) v. Purcell</i>		665	<b>Yorkshire Provident Life Assurance Co. v. Gilbert</b> ([1895] 2 Q. B. 148; 64 L. J. Q. B. 578; 72 L. T. 445—C. A.) followed.		
<b>Williams v. Arkle</b> ((1875) L. R. 7 H. L. 606—H. L.) applied.			<i>Arnold and Butler v. Bottomley</i>		184
<i>In re Roby; Howlett v. Newington</i>		182, 688	<b>Yuill &amp; Co. v. Scott-Robson</b> ([1907] 1 K. B. 685; 76 L. J. K. B. 469; 96 L. T. 842; 23 T. L. R. 247; 12 Com. Cas. 196; 10 Asp. M. C. 453—Channell, J.) affirmed		312, 542
<b>Williams v. Barmouth Urban District Council</b> ((1897) 77 L. T. 383) applied.			Z.		
<i>Hunt v. Acton Urban District Council</i>		357	<b>Zacklynski v. Polushie</b> (37 Can. S. C. R. 177) affirmed		173
<b>Williams v. Midland Ry. Co.</b> ((1907) 23 T. L. R. 236; 12 Com. Cas. 158—Walton, J.) reversed		56	<b>Zick v. London United Tramways, Ltd.</b> ([1908] 1 K. B. 611; 77 L. J. K. B. 316; 24 T. L. R. 240—Jelf, J.) affirmed on different grounds		94
<b>Williams v. Ocean Coal Co., Ltd.</b> ([1907] 2 K. B. 422; 76 L. J. K. B. 1073; 97 L. T. 150; 23 T. L. R. 584—C. A.) applied.					
<i>Schofield v. Orrell Colliery Co., Ltd.</i>		385			
<b>Wilson, In re; Wilson v. Batchelor</b> ([1907] 1 Ch. 450; 76 L. J. Ch. 228; 96 L. T. 392—Parker, J.) affirmed		691			
<b>Wilson v. Carnley</b> ((1907) 23 T. L. R. 757) reversed		112			
<b>Winans v. R.</b> ((1907) 23 T. L. R. 705—Bray, J.) affirmed		161			



# CHRONOLOGICAL LIST OF STATUTES REFERRED TO IN CASES DIGESTED IN THIS VOLUME.

## A.—IMPERIAL STATUTES.

	COL.		COL.
43 Eliz. c. 2 ( <i>Poor Relief Act</i> , 1601), s. 1. NORTH MANCHESTER OVERSEERS v. WINSTANLEY . . . . .	520	5 Geo. 4, c. 83 ( <i>Vagrancy Act</i> , 1824), s. 5. R. v. BROWN . . . . .	157
ss. 1, 6. BOWDEN v. NEW MILLS URBAN DISTRICT COUNCIL . . . . .	464	9 Geo. 4, c. 14 ( <i>Statute of Frauds Amend- ment Act</i> , 1828), s. 1. MARRECO v. RICHARDSON . . . . .	349
21 Jac. 1, c. 16 ( <i>Statute of Limitations</i> , 1623). CHEESE v. KEEN . . . . .	436	9 Geo. 4, c. 61 ( <i>Alehouse Act</i> , 1828), s. 14. R. v. BATEJI . . . . .	322
Re CROYDON; HINCKS v. ROBERTS. 351 MARRECO v. RICHARDSON . . . . .	349	11 Geo. 4 & 1 Will. 4, c. 40 ( <i>Executors Act</i> , 1830), s. 1. In re ROBY; HOWLETT v. NEWING- TON . . . . .	182
22 & 23 Car. 2, c. 10 ( <i>Statute of Distributions</i> , 1670), s. 5. In re ROBY; HOWLETT v. NEWING- TON . . . . .	182, 688	11 Geo. 4 & 1 Will. 4, c. 47 ( <i>Debts Recovery Act</i> , 1830), ss. 6, 8. In re ATKINSON, PROCTOR v. ATKINSON . . . . .	434, 688
29 Car. 2, c. 3 ( <i>Statute of Frauds</i> , 1677), s. 4. LAVALETTE v. RICHES & Co. . . . .	113	2 & 3 Will. 4, c. 45 ( <i>Representation of the People Act</i> , 1832), s. 30. PITTS v. MICHELMORE . . . . .	209
29 Car. 2, c. 7 ( <i>Sunday Observance Act</i> , 1677), s. 1. CONNER v. QUEST. . . . .	631	2 & 3 Will. 4, c. 71 ( <i>Prescription Act</i> , 1832), s. 3. COWPER v. MILBURN . . . . .	194
9 Anne, c. 41 ( <i>Gaming Act</i> , 1710), s. 1. BROWNE v. BAILEY . . . . .	246	HYMAN v. VAN DEN BERGH . . . . .	193
SAXBY v. FULTON . . . . .	249	MORGAN v. FEAR . . . . .	193
14 Geo. 3, c. 78 ( <i>Fires Prevention (Metropolis) Act</i> , 1774), s. 83. In re QUICKE; POLTIMORE v. QUICKE. . . . .	306, 307	RICHARDSON v. GRAHAM . . . . .	194
42 Geo. 3, c. 119 ( <i>Gaming Act</i> , 1802), s. 1. BLYTH v. HULTON & Co., LD. . . . .	251	3 Will. 4, c. xxxvi ( <i>London and Birmingham Ry. Act</i> , 1833), s. 55. RUGBY PORTLAND CEMENT Co. v. LONDON AND NORTH WESTERN RY. Co. . . . .	98
WILLIS v. YOUNG . . . . .	252	3 & 4 Will. 4, c. 15 ( <i>Dramatic Copyright Act</i> , 1833), s. 1. KARNO v. PATHÉ FRÈRES, LD . . . . .	117
s. 2. MARTIN v. BENJAMIN . . . . .	252	ss. 1, 2, TATE v. FULLBROOK . . . . .	117
55 Geo. 3, c. 194 ( <i>Apothecaries Act</i> , 1815), s. 20. APOTHECARIES SOCIETY v. GREGORY 406		3 & 4 Will. 4, c. 27 ( <i>Real Property Limita- tion Act</i> , 1833), s. 2. WILLIAMSON v. THOMAS . . . . .	190
57 Geo. 3, c. 93 ( <i>Distress (Costs) Act</i> , 1817). ss. 1, 2. ROBSON v. BIGGAR . . . . .	187, 483	s. 34. In re HAZELDINE'S TRUSTS . . . . .	350
57 Geo. 3, c. xxix. ( <i>Metropolis Paving Act</i> , 1817), s. 52. CORSELLIS v. LONDON COUNTY COUNCIL . . . . .	417	3 & 4 Will. 4, c. 30 ( <i>Poor Rate Exemption Act</i> , 1833), s. 1. NORTH MANCHESTER OVERSEERS v. WINSTANLEY . . . . .	520
3 Geo. 4, c. 106 ( <i>Bread (London) Act</i> , 1822), s. 4. HOUGHTON v. BUXTON . . . . .	238	3 & 4 Will. 4, c. 42 ( <i>Civil Procedure Act</i> , 1833), ss. 28, 29. MACBETH & Co. v. MARITIME INSURANCE Co. . . . .	425, 487



# CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
3 & 4 Will. 4, c. 74 ( <i>Fines and Recoveries Act</i> , 1833), ss. 15, 18. ATTORNEY-GENERAL <i>v.</i> DUKE OF RICHMOND . . . . .	526	1 Vict. c. 26 ( <i>Wills Act</i> , 1837), s. 24. <i>In re</i> JAMESON, KING <i>v.</i> WINN . . . . .	680
ss. 22, 32. COHEN <i>v.</i> BAYLEY-WORTHINGTON . . . . .	526	s. 27. <i>In re</i> BAKER, HUNT <i>v.</i> BAKER . . . . .	468
ss. 77, 80. JOHNSON <i>v.</i> CLARK . . . . .	277	1 & 2 Vict. c. 105 ( <i>Oaths Act</i> , 1838). RABEY <i>v.</i> BIRCH . . . . .	215, 478
3 & 4 Will. 4, c. 104 ( <i>Administration of Estates Act</i> , 1833). <i>In re</i> ATKINSON, PROCTOR <i>v.</i> ATKINSON . . . . .	434	1 & 2 Vict. c. 110 ( <i>Judgments Act</i> , 1838), s. 12. JOHNSON <i>v.</i> PICKERING . . . . .	566
<i>In re</i> MOON, HOLMES <i>v.</i> HOLMES . . . . .	225	2 & 3 Vict. c. 84 ( <i>Poor Rate Act</i> , 1839), s. 1. R. <i>v.</i> BERMONDSEY BOROUGH COUNCIL . . . . .	465, 515
3 & 4 Will. 4, c. lxiv. ( <i>Glasgow Faculty of Procurators' Widows Fund Act</i> , 1833) COLQUHOUN <i>v.</i> GLASGOW FACULTY OF PROCURATORS . . . . .	310	3 & 4 Vict. c. 9 ( <i>Parliamentary Papers Act</i> , 1840), s. 3. MANGENA <i>v.</i> EDWARD LLOYD, LD. . . . .	346
5 & 6 Will. 4, c. 41 ( <i>Gaming Act</i> , 1835), s. 1. BROWNE <i>v.</i> BAILEY . . . . .	246	3 & 4 Vict. c. 65 ( <i>Admiralty Court Act</i> , 1840), s. 6. THE EL SALTO . . . . .	569
HODGKINS <i>v.</i> SIMPSON . . . . .	247	4 & 5 Vict. c. 38 ( <i>School Sites Act</i> , 1841). ATTORNEY-GENERAL <i>v.</i> PRICE . . . . .	200
HYAMS <i>v.</i> STUART KING . . . . .	248	5 & 6 Vict. c. 35 ( <i>Income Tax Act</i> , 1842). Sched. A. INLAND REVENUE <i>v.</i> EDINBURGH MAGISTRATES . . . . .	298
LADBROOKE & CO. <i>v.</i> BUCKLAND . . . . .	247	Sched. A. C. D. R. <i>v.</i> COMMISSIONERS OF INCOME TAX, <i>ex parte</i> UNIVERSITY COLLEGE, NORTH WALES . . . . .	296
SAXBY <i>v.</i> FULTON . . . . .	249	Sched. D. ENGLISH CROWN SPELTER CO., LD. <i>v.</i> BAKER . . . . .	298
5 & 6 Will. 4, c. 50 ( <i>Highway Act</i> , 1835), s. 24. RADCLIFFE <i>v.</i> MARSDEN URBAN DISTRICT COUNCIL . . . . .	262	GENERAL ACCIDENT ASSURANCE CORPORATION <i>v.</i> MCGOWAN . . . . .	299
ss. 51, 53, 54, 55. R. <i>v.</i> BRADFORD . . . . .	261	GRAMOPHONE AND TYPEWRITERS, LD. <i>v.</i> STANLEY . . . . .	297
R. <i>v.</i> QUEEN'S COUNTY JJ. . . . .	261	Sched. D. Cases I, V. OGILVIE <i>v.</i> INLAND REVENUE . . . . .	297
RUSSELL (EARL) <i>v.</i> MIDHURST RURAL DISTRICT COUNCIL . . . . .	261	Sched. E. r. 1. BLAKISTON <i>v.</i> COOPER . . . . .	295
s. 72. R. <i>v.</i> LYNDON . . . . .	623	5 & 6 Vict. c. 45 ( <i>Copyright Act</i> , 1842), s. 2. TATE <i>v.</i> FULLEROOK . . . . .	117
s. 78. HINDE <i>v.</i> EVANS . . . . .	266	s. 23. R. <i>v.</i> KIDD . . . . .	142
s. 85. R. <i>v.</i> SURREY JJ. . . . .	260	6 & 7 Vict. c. 73 ( <i>Solicitors Act</i> , 1843), s. 32. <i>In re</i> TWO SOLICITORS . . . . .	616
6 & 7 Will. 4, c. 37 ( <i>Bread Act</i> , 1836), s. 4. BLACKLEDGE & SONS, LD. <i>v.</i> BOLSHAW . . . . .	238	s. 37. COBBETT AND OTHERS <i>v.</i> WOOD . . . . .	611
EVANS <i>v.</i> JONES . . . . .	239	SADD <i>v.</i> GRIFFIN . . . . .	612
MATTINSON <i>v.</i> BINLEY . . . . .	239	s. 41. <i>Re</i> R. E. F. . . . .	614
6 & 7 Will. 4, c. 96 ( <i>Parochial Assessment Act</i> , 1836), s. 1. GREEN <i>v.</i> NEWPORT UNION ASSESSMENT COMMITTEE . . . . .	517	<i>Re</i> LEGGATTS AND CARRUTHERS . . . . .	614
STEAD <i>v.</i> NEWPORT UNION ASSESSMENT COMMITTEE . . . . .	517	6 & 7 Vict. c. 86 ( <i>London Hackney Carriages Act</i> , 1843), s. 29. WILLINGALE <i>v.</i> NORRIS . . . . .	415
WADDLE <i>v.</i> SUNDERLAND UNION ASSESSMENT COMMITTEE . . . . .	517	7 & 8 Vict. c. 12 ( <i>International Copyright Act</i> , 1844). JOSEPH WILLIAMS, LD. <i>v.</i> MOORE . . . . .	118
6 & 7 Will. 4, c. lxxxii. ( <i>Taff Vale Railway Act</i> , 1836), s. 69. RHONDDA URBAN DISTRICT COUNCIL <i>v.</i> TAFF VALE RY. CO. . . . .	267	7 & 8 Vict. c. 37 ( <i>School Sites Act</i> , 1844). ATTORNEY-GENERAL <i>v.</i> PRICE . . . . .	200
1 Vict. c. 26 ( <i>Wills Act</i> , 1837). <i>Re</i> BATHO, BATHO <i>v.</i> CROSS . . . . .	220		
s. 9. REEVES <i>v.</i> GRAINGER . . . . .	676		
s. 10. <i>In re</i> BARNETT, DAWES <i>v.</i> IYER . . . . .	467		
<i>In re</i> WALKER, MCCOLL <i>v.</i> BRUCE . . . . .	468		

# CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
7 & 8 Vict. c. 96 ( <i>Execution Act</i> , 1844), s. 61. WOODHAM SMITH v. EDWARDS . . . . .	481	9 & 10 Vict. c. cccxciii. ( <i>Taff Vale Railway Act</i> , 1846), ss. 1, 3. RHONDDA URBAN DISTRICT COUNCIL v. TAFF VALE RY. CO. . . . .	267
7 & 8 Vict. c. 101 ( <i>Poor Law Amendment Act</i> , 1844), s. 62. MALEY v. BAKER . . . . .	346	10 & 11 Vict. c. 17 ( <i>Waterworks Clauses Act</i> , 1847), ss. 1, 28—30, 35. MARRIOTT v. EAST GRINSTEAD WATER CO. . . . .	668
s. 64. R. v. LOCAL GOVERNMENT BOARD; <i>Ex parte</i> STONEHAM UNION . . . . .	463	ss. 18—27. NEW MOSS COLLIERY CO. v. MANCHESTER CORPORATION . . . . .	667
8 & 9 Vict. c. 16 ( <i>Companies Clauses Consolidation Act</i> , 1845), s. 10. DAVIS v. GAS LIGHT AND COKE CO. . . . .	84	s. 32. HARTLEY v. ROCHDALE CORPORATION . . . . .	666
8 & 9 Vict. c. 18 ( <i>Lands Clauses Consolidation Act</i> , 1845), s. 18. ZICK v. LONDON UNITED TRAMWAYS, LD. . . . .	94	s. 43. SIMPSON v. SOUTH OXFORDSHIRE WATER AND GAS CO. . . . .	670
s. 68. PIGGOTT v. MIDDLESEX COUNTY COUNCIL . . . . .	343	10 & 11 Vict. c. 27 ( <i>Harbours, Docks, and Piers Clauses Act</i> , 1847), ss. 25, 33, 47. LIVERPOOL AND NORTH WALES STEAMSHIP CO., LD. v. MERSEY TRADING CO., LTD. . . . .	607
s. 69. <i>Ex parte</i> EMANUEL HOSPITAL . . . . .	97	10 & 11 Vict. c. 34 ( <i>Towns Improvement Clauses Act</i> , 1847), s. 53. CRUMP v. CHORLEY CORPORATION . . . . .	269
<i>Ex parte</i> WOOLWICH CORPORATION . . . . .	97	10 & 11 Vict. c. 38 ( <i>Land Drainage Act</i> , 1847), ss. 14, 15. FINCH v. BANNISTER . . . . .	565
ss. 76, 80. <i>In re</i> JACOBS, BALDWIN v. PRESTON . . . . .	97	10 & 11 Vict. c. 89 ( <i>Town Police Clauses Act</i> , 1847), s. 45. R. v. FLETCHER . . . . .	621
s. 78. RUGBY PORTLAND CEMENT CO., LD. v. LONDON & NORTH WESTERN RY. CO. . . . .	98	11 & 12 Vict. c. 42 ( <i>Indictable Offences Act</i> , 1848), s. 21. R. v. SOUTHAMPTON JJ. . . . .	368
s. 82. <i>In re</i> ELEMENTARY EDUCATION ACTS . . . . .	96	11 & 12 Vict. c. 43 ( <i>Summary Jurisdiction Act</i> , 1848), ss. 1, 14. R. v. TABRUM . . . . .	370
<i>In re</i> MIDDLESEX LIGHT RAILWAYS ORDER . . . . .	96	s. 5. DU CROS v. LAMBOURNE . . . . .	132, 622
<i>In re</i> THAMES TUNNEL ACT, 1900 . . . . .	96	11 & 12 Vict. c. 44 ( <i>Justices' Protection Act</i> , 1848), s. 2. QUINN v. PRATT . . . . .	373
s. 127. <i>In re</i> LANCASHIRE & YORKSHIRE RY. CO. v. EARL OF DERBY . . . . .	99	12 & 13 Vict. c. 45 ( <i>Quarter Sessions Act</i> , 1849), s. 7. R. v. BRADFORD . . . . .	261
8 & 9 Vict. c. 20 ( <i>Railway Clauses Consolidation Act</i> , 1845), s. 46. GLASGOW CORPORATION v. CALEDONIAN RY. CO. . . . .	267	R. v. TABRUM . . . . .	370
ss. 50, 51. RHONDDA URBAN DISTRICT COUNCIL v. TAFF VALE RY. CO. . . . .	267	12 & 13 Vict. c. 92 ( <i>Cruelty to Animals Act</i> , 1849), s. 2. HOOKER v. GRAY . . . . .	13
ss. 77, 79. GREAT WESTERN RY. CO. v. CARPALLA UNITED CHINA CLAY CO., LD. . . . .	421	13 & 14 Vict. c. 7 ( <i>London Hackney Carriages Act</i> , 1850), s. 4. WILLINGALE v. NORRIS . . . . .	415
8 & 9 Vict. c. 106 ( <i>Real Property Act</i> , 1845), s. 5. FORSTER v. ELVET COLLIERY CO. . . . .	420	15 & 16 Vict. c. 85 ( <i>Burial Act</i> , 1852), ss. 25, 32, 33, 37. ANDERSON v. WANDSWORTH BOROUGH COUNCIL . . . . .	52
8 & 9 Vict. c. 109 ( <i>Gaming Act</i> , 1845), s. 18. BROWNE v. BAILEY . . . . .	246	16 & 17 Vict. c. 33 ( <i>London Hackney Carriage Act</i> , 1853), ss. 19, 21. WILLINGALE v. NORRIS . . . . .	415
GOODSON v. BAKER . . . . .	249		
HODGKINS v. SIMPSON . . . . .	247		
HYAMS v. STUART KING . . . . .	248		
LADBROOKE & CO. v. BUCKLAND . . . . .	247		
8 & 9 Vict. c. 117 ( <i>Poor Removal Act</i> , 1845), s. 2. LOCAL GOVERNMENT BOARD FOR IRELAND v. BLACKBURN UNION . . . . .	466		

# CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
16 & 17 Vict. c. 34 ( <i>Income Tax Act</i> , 1853), Sched. D. ENGLISH CROWN SPELTER CO. v. BAKER . . . . .	298	22 & 23 Vict. c. 61 ( <i>Matrimonial Causes Act</i> , 1859). VALLANCE v. VALLANCE . . . . .	292
GRAMOPHONE AND TYPEWRITERS, LD. v. STANLEY . . . . .	297	VIVIAN v. VIVIAN . . . . .	291
16 & 17 Vict. c. 57 ( <i>Succession Duty Act</i> , 1853), s. 15. BUCHAN (EARL OF) v. LORD ADVOCATE . . . . .	165	23 & 24 Vict. c. 136 ( <i>Charitable Trusts Act</i> , 1860), s. 6. In re BERKHAMSTED GRAMMAR SCHOOL . . . . .	201
16 & 17 Vict. c. 119 ( <i>Betting Act</i> , 1853), ss. 1, 7. STOTT v. RENTON . . . . .	250	23 & 24 Vict. c. 144 ( <i>Matrimonial Causes Act</i> , 1860), s. 6. REES v. REES . . . . .	292
17 & 18 Vict. c. 31 ( <i>Railway and Canal Traffic Act</i> , 1854), s. 7. WILLIAMS v. MIDLAND RY. CO. . . . .	56	23 & 24 Vict. c. 145 ( <i>Lord Cranworth's Act</i> , 1860), s. 27. Re BOUCHERETT . . . . .	654
17 & 18 Vict. c. 113 ( <i>Real Estate Charges Act</i> , 1854), s. 1. In re WILSON . . . . .	698	24 & 25 Vict. c. 10 ( <i>Admiralty Court Act</i> , 1861), s. 5. THE EL SALTO . . . . .	569
18 & 19 Vict. c. 120 ( <i>Metropolis Management Act</i> , 1855), ss. 1, 2, 24. PRICE'S PATENT CANDLE CO., LD. v. LONDON COUNTY COUNCIL . . . . .	447	FOONG TAI v. BUCHMEISTER & CO. . . . .	568
ss. 82, 85. FARMER v. LONG . . . . .	414	24 & 25 Vict. c. 45 ( <i>General Piers and Har- bours Act</i> , 1861), ss. 3, 15, 16. LIVERPOOL AND NORTH WALES STEAMSHIP CO., LD. v. MERSEY TRADING CO., LD. . . . .	607
s. 143. FLEMING v. LONDON COUNTY COUNCIL . . . . .	411	24 & 25 Vict. c. 76 ( <i>Poor Removal (No. 2) Act</i> , 1861), s. 2. LOCAL GOVERNMENT BOARD FOR IRELAND v. BLACKBURN UNION . . . . .	466
s. 250. WILSON'S MUSIC AND GENERAL PRINTING CO., LD. v. FINSBURY BOROUGH COUNCIL . . . . .	414	24 & 25 Vict. c. 94 ( <i>Accessories and Abettors Act</i> , 1861), s. 8. DU CROS v. LAMBOURNE . . . . .	132, 622
19 & 20 Vict. c. 119 ( <i>Marriage and Regis- tration Acts Amendment Act</i> , 1856), s. 2. In re RUTTER, DONALDSON v. RUTTER . . . . .	275	R. v. DE MARNEY . . . . .	144
20 & 21 Vict. c. 77 ( <i>Probate Act</i> , 1857), s. 73. In re LEVY . . . . .	219	24 & 25 Vict. c. 96 ( <i>Larceny Act</i> , 1861), s. 25. BARNARD v. ROBERTS . . . . .	231
20 & 21 Vict. c. 81 ( <i>Burial Act</i> , 1857), s. 24. WESTMINSTER CORPORATION v. ST. GEORGE'S, HANOVER SQUARE . . . . .	53	ss. 31, 91. R. v. COOPER . . . . .	140
20 & 21 Vict. c. 85 ( <i>Matrimonial Causes Act</i> , 1857), s. 16. HARRIMAN v. HARRIMAN . . . . .	284	s. 100. R. v. LONDON JJ.; <i>Ex parte</i> DETTMER & CO. . . . .	133
s. 26. WILLIAM CUENOD & CO. v. LESLIE AND WIFE . . . . .	280	24 & 25 Vict. c. 97 ( <i>Malicious Damage Act</i> , 1861), s. 16. R. v. RUTTER . . . . .	145
s. 45. LORRIMAN v. LORRIMAN . . . . .	292	24 & 25 Vict. c. 100 ( <i>Offences Against the Person Act</i> , 1861), s. 20. R. v. PETERS . . . . .	147
REES v. REES . . . . .	292	s. 42. PICKERING v. WILLOUGHBY . . . . .	135
21 & 22 Vict. c. 95 ( <i>Court of Probate Act</i> , 1858), s. 16. Re BOUCHERETT . . . . .	654	s. 57. R. v. AUDLEY . . . . .	136
21 & 22 Vict. c. 104 ( <i>Metropolis Management Amendment Act</i> , 1858), ss. 1, 2, 24. PRICE'S PATENT CANDLE CO., LD. v. LONDON COUNTY COUNCIL . . . . .	447	s. 58. R. v. LOCKETT . . . . .	135
21 & 22 Vict. c. cxiii. ( <i>Great Northern and Manchester, Sheffield and Lincoln- shire Railway Company's Act</i> , 1858), ss. 1, 2. In re GREAT NORTHERN RY. CO. AND GREAT CENTRAL RY. CO. . . . .	504	24 & 25 Vict. c. 114 ( <i>Lord Kingsdown's Act</i> , 1861). Re BATHO; BATHO v. CROSS . . . . .	220
		25 & 26 Vict. c. 10 ( <i>Metropolis Management Amendment Act</i> , 1862), s. 75. FLEMING v. LONDON COUNTY COUNCIL . . . . .	411



# CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
25 & 26 Vict. c. 68 ( <i>Fine Arts Copyright Act</i> , 1862), ss. 1, 4, 11.		26 & 27 Vict. c. 93 ( <i>Waterworks Clauses Act</i> , 1863), s. 12.	
MILLER AND LANG v. POLAK, LD. . . . .	116	CHESTER WATERWORKS v. CHESTER UNION . . . . .	669
s. 11.		HARROGATE CORPORATION v. MCKAY . . . . .	670
FROST AND REED v. OLIVE SERIES PUBLISHING CO. . . . .	119	s. 17.	
25 & 26 Vict., c. 89 ( <i>Companies Act</i> , 1862), s. 17.		COLNE VALLEY WATER CO. v. HALL	666
<i>In re</i> NATIONAL MOTOR MAIL COACH CO., LD. . . . .	68	s. 19.	
ss. 25, 30.		KYFFIN v. METROPOLITAN WATER BOARD . . . . .	418
<i>In re</i> SAUNDERS & CO., LD. . . . .	85	26 & 27 Vict. c. 112 ( <i>Telegraph Act</i> , 1863), ss. 3, 6, 32.	
s. 41.		SOUTH EASTERN RY. CO. AND OTHERS v. NATIONAL TELEPHONE CO., LD. . . . .	628
<i>In re</i> ALBERT BAKER & CO., LD. . . . .	640	ss. 6, 9, 12.	
s. 47.		<i>In re</i> THE POSTMASTER-GENERAL AND THE WATFORD URBAN DISTRICT COUNCIL . . . . .	628
PREMIER INDUSTRIAL BANK, LD. v. CRABTREE, LD. . . . .	43	s. 12.	
s. 51.		<i>In re</i> THE POSTMASTER-GENERAL AND THE WOOLWICH BOROUGH COUNCIL . . . . .	628
NORMANDY v. IND, COOPE & CO. LD. . . . .	81	27 & 28 Vict. c. 39 ( <i>Union Assessment Committee Act</i> , 1864), s. 1.	
s. 79.		HUDSON v. RHODES . . . . .	515
<i>In re</i> CAEMENTIUM (PARENT) CO., LD. . . . .	90	R. v. WEST RIDING JUSTICES. . . . .	516
s. 79 (5).		RHONDDA VALLEY BREWERIES CO., LD. v. PONTYPRIDD ASSESSMENT COMMITTEE . . . . .	516
<i>In re</i> INTERNATIONAL SECURITIES CORPORATION, LD. . . . .	90	27 & 28 Vict. c. 47 ( <i>Penal Servitude Act</i> , 1864), s. 4, Sched. A.	
ss. 115, 161, 162.		R. v. HAMILTON . . . . .	149
<i>In re</i> BRITISH BUILDING STONE CO. LD. . . . .	85	30 & 31 Vict. c. 102 ( <i>Representation of the People Act</i> , 1867), s. 3.	
ss. 138, 141.		PITTS v. MICHELMORE . . . . .	209
<i>In re</i> NEW DE KAAP, LD. . . . .	92	s. 7.	
s. 143.		DAVIS v. WALLIS . . . . .	514
HASTINGS CORPORATION v. LETTON & SONS . . . . .	120	WHITE AND HALES v. ISLINGTON BOROUGH COUNCIL . . . . .	514
s. 161.		30 & 31 Vict. c. 131 ( <i>Companies Act</i> , 1867), s. 9.	
BISGOOD v. HENDERSON'S TRANSVAAL ESTATES, LD. . . . .	83	WALKER STEAM TRAWL FISHING CO., LD., <i>In re</i> . . . . .	84
Sched. I, Table A, arts 54, 58.		s. 12.	
<i>In re</i> LONDON GIGANTIC WHEEL CO. LD. . . . .	76	<i>In re</i> PORTSMOUTH AND DISTRICT VACUUM CLEANER CO., LD. . . . .	84
Art 53.		31 & 32 Vict. 32 ( <i>Endowed Schools Act</i> , 1868).	
MARSHALL'S VALVE GEAR CO., LD. v. MANNING, WARDLE & CO. LD. . . . .	80	WRIGHT v. MARQUESS OF ZEALAND	110
25 & 26 Vict. c. 102 ( <i>Metropolis Management Amendment Act</i> , 1862), s. 75.		31 & 32 Vict. c. 58 ( <i>Parliamentary Electors Registration Act</i> , 1868), s. 30.	
FLEMING v. LONDON COUNTY COUNCIL . . . . .	411	PITTS v. MICHELMORE . . . . .	209
25 & 26 Vict. c. 103 ( <i>Union Assessment Committee Act</i> , 1862), s. 24.		31 & 32 Vict. c. 71 ( <i>County Courts Admiralty Jurisdiction Act</i> , 1868), s. 31.	
RHONDDA VALLEY BREWERIES CO., LD. v. PONTYPRIDD ASSESSMENT COMMITTEE . . . . .	516	"THE BRENNER" . . . . .	8
25 & 26 Vict. c. cxliv. ( <i>Crystal Palace and South London Junction Railway Act</i> , 1862), s. 79.		31 & 32 Vict. c. xl. ( <i>Brentford Gas Act</i> , 1868), s. 21.	
LONDON COUNTY COUNCIL v. COAL CO-OPERATIVE SOCIETY, LD. . . . .	411	BRENTFORD GAS CO. v. CHISWICK URBAN DISTRICT COUNCIL . . . . .	253
26 & 27 Vict. c. 41 ( <i>Innkeepers' Liability Act</i> , 1863), s. 1.		32 & 33 Vict. c. 14 ( <i>Revenue Act</i> , 1869), s. 19 (3).	
WHITEHOUSE v. PICKETT . . . . .	304	WHITELEY v. BURNS . . . . .	583
26 & 27 Vict. c. 89 ( <i>Poor Removal Act</i> , 1863), s. 7.		s. 27.	
LOCAL GOVERNMENT BOARD FOR IRELAND v. BLACKBURN UNION . . . . .	466	LATCHFORD v. KELSEY . . . . .	583

# CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
32 & 33 Vict. c. 41 ( <i>Poor Rate Assessment and Collection Act</i> , 1869), ss. 3, 4, 6.		33 & 34 Vict. c. 78 ( <i>Tramways Act</i> , 1870), ss. 25, 28, 30.	
WHITE AND HALES v. ISLINGTON BOROUGH COUNCIL . . . . .	514	WEST v. BRISTOL TRAMWAYS CO., LD. . . . .	648
DAVIS v. WALLIS . . . . .	514	s. 28.	
s. 14, 20.		ACTON URBAN DISTRICT COUNCIL v. LONDON UNITED TRAMWAYS CO., LD. . . . .	647
EVANS v. BATTERSEA BOROUGH COUNCIL . . . . .	514	s. 30.	
32 & 33 Vict. c. 56 ( <i>Endowed Schools Act</i> , 1869), ss. 5, 30.		In re RHONDDA URBAN DISTRICT COUNCIL AND TAFF VALE RY. CO. . . . .	646
In re BETTON'S CHARITY . . . . .	59	s. 43.	
ss. 9, 10, 22.		NORTH METROPOLITAN TRAMWAYS CO., LD. v. LEYTON URBAN DISTRICT COUNCIL . . . . .	649
WRIGHT v. MARQUIS OF ZETLAND . . . . .	110		
ss. 11, 28, 45.		34 & 35 Vict. c. 31 ( <i>Trade Union Act</i> , 1871), s. 4.	
In re BERKHAMSTED GRAMMAR SCHOOL . . . . .	201	COPE v. CROSSINGHAM . . . . .	637
32 & 33 Vict. c. 62 ( <i>Debtors Act</i> , 1869), s. 4 (3).		GOZNEY v. BRISTOL, ETC., SOCIETY . . . . .	637
HARPER v. MCINTYRE . . . . .	657	s. 13 (5).	
s. 5.		OSBORNE v. AMALGAMATED SOCIETY OF RAILWAY SERVANTS . . . . .	636
WOODHAM-SMITH v. EDWARDS . . . . .	481	34 & 35 Vict. c. 41 ( <i>Gasworks Clauses Act</i> , 1871), s. 36.	
s. 13 (1).		BRENTFORD GAS CO. v. CHISWICK URBAN DISTRICT COUNCIL . . . . .	253
R. v. BENSON . . . . .	130	34 & 35 Vict. c. 56 ( <i>Dogs Act</i> , 1871), s. 2.	
R. v. MUIRHEAD . . . . .	141	LOCKETT v. WITHEY . . . . .	14
32 & 33 Vict. c. 67 ( <i>Valuation (Metropolis) Act</i> , 1869), s. 40.		R. v. OWEN . . . . .	14, 372
HORNER v. STEPNEY UNION ASSESSMENT COMMITTEE . . . . .	512	34 & 35 Vict. c. 112 ( <i>Prevention of Crimes Act</i> , 1871).	
s. 47.		R. v. WHITLEY . . . . .	142
R. v. SOUTHWARK BOROUGH COUNCIL . . . . .	512	s. 12.	
Sched. III.		BASTABLE v. LITTLE . . . . .	624
WESTERN v. KENSINGTON ASSESSMENT COMMITTEE . . . . .	513	34 & 35 Vict. c. 113 ( <i>Metropolis Water Act</i> , 1871), s. 17.	
32 & 33 Vict. c. 73 ( <i>Telegraph Act</i> , 1869), s. 5.		KYFFIN v. METROPOLITAN WATER BOARD . . . . .	418
POSTMASTER-GENERAL v. NATIONAL TELEPHONE CO. LD. . . . .	627	35 & 36 Vict. c. 15 ( <i>Parks Regulation Act</i> , 1872), s. 4.	
32 & 33 Vict. c. 110 ( <i>Charitable Trusts Act</i> , 1869), s. 7.		R. v. MARSHAM . . . . .	622
In re BERKHAMSTED GRAMMAR SCHOOL . . . . .	201	35 & 36 Vict. c. 33 ( <i>Ballot Act</i> , 1872), Sched. II.	
33 & 34 Vict. c. 28 ( <i>Attorneys and Solicitors Act</i> , 1870), s. 4.		OLDHAM ELECTION: COOPER v. OGDEN . . . . .	205
BAKE v. FRENCH . . . . .	612	35 & 36 Vict. c. 65 ( <i>Bastardy Laws Amendment Act</i> , 1872), s. 4.	
33 & 34 Vict. c. 52 ( <i>Extradition Act</i> , 1870), ss. 3, 10, 11.		In re HARRINGTON, WILDER v. TURNER . . . . .	41, 223
R. v. BRIXTON PRISON GOVERNOR, Ex parte AUWERA . . . . .	227	35 & 36 Vict. c. 93 ( <i>Pawnbrokers Act</i> , 1872), s. 31.	
33 & 34 Vict. c. 61 ( <i>Life Assurance Companies Act</i> , 1870), s. 3.		ALLWORTHY AND WALKER v. CLAYTON . . . . .	458
In re UNITED PROVIDENT ASSURANCE CO. AND In re POPULAR LIFE ASSURANCE CO. . . . .	311	35 & 36 Vict. c. 94 ( <i>Licensing Act</i> , 1872), s. 3.	
33 & 34 Vict. c. 71 ( <i>National Debt Act</i> , 1870), ss. 22, 66.		DUNNING v. OWEN . . . . .	323
SAVAGE v. NORTON . . . . .	27	PECKOVER v. DEFRIES . . . . .	323
33 & 34 Vict. c. 75 ( <i>Elementary Education Act</i> , 1870), ss. 6, 47.		s. 8.	
R. v. AUSTIN . . . . .	203	PENNINGTON v. PINCOCK . . . . .	323
ss. 7 (1), 74 (1) (2).		s. 13.	
BELL v. GRAHAM . . . . .	202, 203	LAWSON v. EDMINSON . . . . .	324
MARSHALL v. GRAHAM . . . . .	202, 203	THOMPSON v. MCKENZIE . . . . .	324

# CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
35 & 36 Vict. c. 94 ( <i>Licensing Act</i> , 1872), s. 17.		38 & 39 Vict. c. 55 ( <i>Public Health Act</i> , 1875), s. 211 (1) (b).	
JAYES v. HARRIS . . . . .	250	ATTORNEY-GENERAL FOR DUCHY OF LANCASTER v. FLEETWOOD URBAN DISTRICT COUNCIL . . . . .	359
s. 29.		ss. 229, 230.	
GROH v. HESKETH . . . . .	326	CROYDON CORPORATION v. CROY- DON RURAL DISTRICT COUNCIL . . . . .	511
s. 40 (2).		ss. 229, 231.	
R. v. Bath JJ. . . . .	322	R. v. Fox . . . . .	362
36 & 37 Vict. c. 66 ( <i>Judicature Act</i> , 1873), s. 47.		s. 247 (7) (8).	
ROBSON v. BIGGAR . . . . .	187, 483	R. v. CARSON-ROBERTS . . . . .	354
s. 89.		s. 267.	
R. v. SELFE . . . . .	124	WEST HAM CORPORATION v. THOMAS . . . . .	271
37 & 38 Vict. c. 15 ( <i>Betting Act</i> , 1874), s. 3 (3).		s. 268.	
STOTT v. RENTON . . . . .	250	LOCAL GOVERNMENT BOARD v. STREET . . . . .	270
37 & 38 Vict. c. 42 ( <i>Building Societies Act</i> , 1874), s. 42.		38 & 39 Vict. c. 63 ( <i>Sale of Food and Drugs</i> <i>Act</i> , 1875), s. 3.	
CROSBIE-HILL v. SAYER . . . . .	433	CULLEN v. M'NAIR . . . . .	233
37 & 38 Vict. c. 57 ( <i>Real Property Limita- tion Act</i> , 1874), s. 1.		s. 6.	
WILLIAMSON v. THOMAS . . . . .	190	DAWES v. WILKINSON . . . . .	234
s. 8.		ss. 6, 8.	
In re HAZEDINE'S TRUSTS . . . . .	350	BUNDY v. LEWIS . . . . .	234
37 & 38 Vict. c. 62 ( <i>Infants Relief Act</i> , 1874), s. 1.		ss. 6, 21.	
LEVENE v. BROUGHAM . . . . .	300	ELDER'S DRYDEN . . . . .	234
38 & 39 Vict. c. 55 ( <i>Public Health Act</i> , 1875), ss. 4, 41.		ss. 6, 25.	
BROMLEY CORPORATION v. CHE- SHIRE . . . . .	564	SANDERS v. SADLER . . . . .	236
WOOD GREEN URBAN DISTRICT COUNCIL v. JOSEPH . . . . .	563	ss. 9, 25.	
ss. 16, 17, 308.		EVANS v. WEATHERITT . . . . .	235
HORTON v. COLWYN BAY AND COLWYN URBAN DISTRICT COUNCIL	564	HARGREAVES v. SPACKMAN . . . . .	237
s. 17.		REES v. DAVIES . . . . .	237
ATTORNEY-GENERAL v. BIRMING- HAM, ETC., DRAINAGE BOARD . . . . .	662	s. 18, Sched.	
s. 21.		FOOT v. FINDLAY . . . . .	240
ATTORNEY-GENERAL v. ASHBY . . . . .	563	38 & 39 Vict. c. 86 ( <i>Conspiracy and Protec- tion of Property Act</i> , 1875), s. 7 (2).	
s. 149.		R. v. WALL . . . . .	136
LODGE HOLES COLLIERY CO. v. WEDNESBURY CORPORATION . . . . .	262	38 & 39 Vict. c. 87 ( <i>Land Transfer Act</i> , 1875), s. 95.	
s. 150.		WEYMOUTH v. DAVIS . . . . .	527
BLOOR v. BECKENHAM URBAN DISTRICT COUNCIL . . . . .	270	38 & 39 Vict. c. 90 ( <i>Employers and Work- men Act</i> , 1875), s. 10.	
STOURBRIDGE URBAN DISTRICT COUNCIL v. BUTLER AND GROVE . . . . .	270	RUSHBROOK v. GRIMSBY PALACE THEATRE CO. . . . .	401
PORTSMOUTH CORPORATION v. HALL	271	39 & 40 Vict. c. 16 ( <i>Customs and Inland Revenue Act</i> , 1876), s. 5.	
ss. 157, 159.		WHITELEY v. BURNS . . . . .	583
HANRAHAN v. LEIGH URBAN DIS- TRICT COUNCIL . . . . .	361	39 & 40 Vict. c. 22 ( <i>Trade Union Act Amend- ment Act</i> , 1876), s. 16.	
s. 211.		GOZNEY v. BRISTOL, ETC. SOCIETY -	637
R. v. SHUTTLEWORTH . . . . .	510	OSBORNE v. AMALGAMATED SOCIETY OF RAILWAY SERVANTS . . . . .	636
SMITH'S DOCK CO., LTD. v. TYNE- MOUTH CORPORATION . . . . .	510	39 & 40 Vict. c. 61 ( <i>Divided Parishes and Poor Law Amendment Act</i> , 1876), ss. 1, 6.	
WAKEFIELD CORPORATION v. WAKE- FIELD AND DISTRICT LIGHT RY. CO.	510	WEST HAM UNION v. EDMONTON UNION . . . . .	465
s. 174.		s. 11.	
BELL v. BRIDLINGTON CORPORA- TION . . . . .	50, 51	R. v. LOCAL GOVERNMENT BOARD; Ex parte STONEHAM UNION . . . . .	463
HUNT v. ACTON URBAN DISTRICT COUNCIL . . . . .	357		



# CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
39 & 40 Vict. c. 61 ( <i>Divided Parishes and Poor Law Amendment Act</i> , 1876), s. 23.		41 & 42 Vict. c. 77 ( <i>Highways and Locomotives Amendment Act</i> , 1878), s. 23.	
CARDIFF UNION <i>v.</i> BANKS . . . . .	464	BROMLEY RURAL DISTRICT COUNCIL <i>v.</i> CROYDON CORPORATION . . . . .	264
s. 34.		GEIRIONYDD RURAL DISTRICT COUNCIL <i>v.</i> GREEN . . . . .	263
PLYMOUTH UNION <i>v.</i> POPLAR UNION . . . . .	465	KENT COUNTY COUNCIL <i>v.</i> KENT COAL CONCESSIONS, LD. . . . .	263
39 & 40 Vict. c. 75 ( <i>Rivers Pollution Prevention Act</i> , 1876), ss. 4, 7.		R. <i>v.</i> BATH COUNTY COURT JUDGE . . . . .	265
BUTTERWORTH <i>v.</i> WEST RIDING RIVERS BOARD . . . . .	662	REIGATE RURAL DISTRICT COUNCIL <i>v.</i> SUTTON DISTRICT WATER CO. . . . .	265
s. 7.		SHEPTON MALLET RURAL DISTRICT COUNCIL <i>v.</i> WAINWRIGHT & CO. . . . .	263
BROOK <i>v.</i> METHAM URBAN DISTRICT COUNCIL . . . . .	661	s. 30.	
40 & 41 Vict. c. 18 ( <i>Settled Estates Act</i> , 1877), ss. 10, 13.		HINDLE AND PALMER <i>v.</i> NOBLETT . . . . .	624
<i>Re</i> CHESHIRE'S SETTLED ESTATES . . . . .	554	R. <i>v.</i> WILBRAHAM . . . . .	625
40 & 41 Vict. c. 26 ( <i>Companies Act</i> , 1877), ss. 3, 4.		STAR OMNIBUS CO. <i>v.</i> TAGG . . . . .	625
<i>In re</i> WALKER STEAM TRAWL FISHING CO., LD. . . . .	84	42 & 43 Vict. c. 11 ( <i>Bankers' Books Evidence Act</i> , 1879), ss. 7, 10.	
40 & 41 Vict. c. 34 ( <i>Real Estate Charges Act</i> , 1877).		R. <i>v.</i> KINGHORN . . . . .	215
<i>In re</i> BOWERMAN; PORTER <i>v.</i> BOWERMAN . . . . .	162	42 & 43 Vict. c. 30 ( <i>Sale of Food and Drugs Act Amendment Act</i> , 1879), s. 3.	
41 & 42 Vict. c. 19 ( <i>Matrimonial Causes Act</i> , 1878), s. 2.		TYLER <i>v.</i> DAIRY SUPPLY CO., LD. . . . .	235
WESTCOTT <i>v.</i> WESTCOTT . . . . .	281	s. 6.	
41 & 42 Vict. c. 26 ( <i>Parliamentary and Municipal Registration Act</i> , 1878), s. 23.		DAWES <i>v.</i> WILKINSON . . . . .	234
MAJOR <i>v.</i> TOWN CLERK OF SHREWSBURY . . . . .	207	42 & 43 Vict. c. 49 ( <i>Summary Jurisdiction Act</i> , 1879), s. 25.	
s. 28 (10).		R. <i>v.</i> WILKINS . . . . .	369
KENT <i>v.</i> FITTALL . . . . .	207, 208	s. 33 (2).	
41 & 42 Vict. c. 31 ( <i>Bills of Sale Act</i> , 1878).		R. <i>v.</i> WOODCOCK . . . . .	373
CLARK <i>v.</i> BALM HILL AND SONS . . . . .	45	43 & 44 Vict. c. 35 ( <i>Wild Birds Protection Act</i> , 1880), s. 3.	
s. 4.		HOLLIS <i>v.</i> YOUNG . . . . .	16
LORD'S TRUSTEE <i>v.</i> GREAT EASTERN RY. CO. . . . .	46, 47	43 & 44 Vict. c. 42 ( <i>Employers' Liability Act</i> , 1880), s. 1 (1).	
s. 10 (2).		GREENWOOD <i>v.</i> GREENWOOD . . . . .	400
NEVERSON <i>v.</i> SEYMOUR . . . . .	47	BIDDLE <i>v.</i> HART . . . . .	401
s. 10 (3).		s. 8.	
<i>Re</i> LEBER; <i>Ex parte</i> THE TRUSTEE . . . . .	46	RUSHBROOK <i>v.</i> GRIMSBY PALACE THEATRE CO. . . . .	401
PETTIPT <i>v.</i> LODGE AND ANOTHER . . . . .	46	44 & 45 Vict. c. 41 ( <i>Conveyancing Act</i> , 1881), s. 14.	
41 & 42 Vict. c. 33 ( <i>Dentists Act</i> , 1878), s. 3.		PIGGOTT <i>v.</i> MIDDLESEX COUNTY COUNCIL . . . . .	343
BARNES <i>v.</i> BROWN . . . . .	407	s. 14 (1).	
41 & 42 Vict. c. 49 ( <i>Weights and Measures Act</i> , 1878), s. 25.		GUILLEMARD <i>v.</i> SILVERTHORNE . . . . .	338
ANGLO-AMERICAN OIL CO., LD. <i>v.</i> MANNING . . . . .	672	ss. 19, 20.	
BELLAMY <i>v.</i> GREAT WESTERN DAIRIES, LD. . . . .	671	BARKER <i>v.</i> ILLINGWORTH . . . . .	436
41 & 42 Vict. c. 76 ( <i>Telegraph Act</i> , 1878), s. 3.		s. 30 (1).	
<i>In re</i> THE POSTMASTER-GENERAL AND THE WATFORD URBAN DISTRICT COUNCIL . . . . .	428	<i>In re</i> ROUTLEDGE . . . . .	655
<i>In re</i> THE POSTMASTER-GENERAL AND WOOLWICH BOROUGH COUNCIL . . . . .	428	s. 58.	
41 & 42 Vict. c. 77 ( <i>Highways and Locomotives Amendment Act</i> , 1878), ss. 10, 27.		FORSTER <i>v.</i> ELVET COLLIERY CO. . . . .	420
LODGE HOLES COLLIERY CO. <i>v.</i> WEDNESBURY CORPORATION . . . . .	262	s. 71.	
		<i>Re</i> BOUCHERETT . . . . .	654
		44 & 45 Vict. c. 51 ( <i>Wild Birds Protection Act</i> , 1881), s. 2.	
		HOLLIS <i>v.</i> YOUNG . . . . .	16
		44 & 45 Vict. c. 62 ( <i>Veterinary Surgeons Act</i> , 1881), s. 17 (1).	
		ROYAL COLLEGE OF VETERINARY SURGEONS <i>v.</i> COLLINSON . . . . .	407

# CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
44 & 45 Vict. c. 69 ( <i>Fugitive Offenders Act</i> , 1881), ss. 5, 9, 10.		45 & 46 Vict. c. Iv. ( <i>Liverpool Improvement Act</i> , 1882), s. 36.	
R. v. BRUXTON PRISON GOVERNOR, <i>Ex parte</i> PERCIVAL . . . . .	227	GOLDSTRAW v. JONES . . . . .	361
45 & 46 Vict. c. 38 ( <i>Settled Land Act</i> , 1882), ss. 2, 3, 17, 21.		46 & 47 Vict. c. 51 ( <i>Corrupt and Illegal Practices Prevention Act</i> , 1883), ss. 6, 38.	
<i>In re</i> BROTHERTON . . . . .	559	MORRIS v. TOWN CLERK OF SHREWSBURY . . . . .	204
ss. 2, 56.		46 & 47 Vict. c. 52 ( <i>Bankruptcy Act</i> , 1883).	
TALBOT v. SCARISBRICK . . . . .	561	s. 4 (1) (9).	
ss. 20, 50.		<i>In re</i> A DEBTOR, <i>Ex parte</i> THE PETITIONING CREDITOR . . . . .	30, 31
<i>In re</i> DICKINS AND KELSALL'S CONTRACT . . . . .	559	s. 9 (1).	
ss. 21, 23, 33.		COHEN v. REBOW . . . . .	29
<i>In re</i> GURNEY'S SETTLEMENT . . . . .	555	ss. 12, 102 (5).	
ss. 22, 53.		<i>Re</i> JONES . . . . .	34
<i>In re</i> HARE . . . . .	560	s. 23.	
ss. 25, 26.		PEARCE v. BULLARD, KING & CO. . . . .	36
<i>In re</i> EARL OF EGMONT'S SETTLEMENT . . . . .	555	ss. 27, 142.	
s. 56 (2).		<i>Re</i> WEINBURG, <i>Ex parte</i> OFFICIAL RECEIVER . . . . .	34
<i>In re</i> DE MOLEYN'S AND HARRIS' CONTRACT . . . . .	364	s. 38.	
s. 63.		<i>In re</i> GEDNEY, SMITH v. GRUMMIT . . . . .	222
<i>In re</i> WORMALD'S SETTLED ESTATES . . . . .	555	ss. 38, 44.	
45 & 46 Vict. c. 40 ( <i>Copyright (Musical Compositions) Act</i> , 1882), s. 1.		LORD'S TRUSTEE v. GREAT EASTERN RY. CO. . . . .	46, 47
SARPY v. HOLLAND . . . . .	118	ss. 38, 47.	
45 & 46 Vict. c. 43 ( <i>Bills of Sale Act</i> , 1882), s. 8.		LISTER v. HOOSON . . . . .	39
PETTITT v. LODGE AND ANOTHER . . . . .	46	ss. 42, 43.	
ss. 8, 9.		<i>In re</i> BUMPUS, <i>Ex parte</i> WHITE . . . . .	29, 187
NEVERSON v. SEYMOUR . . . . .	47	s. 47.	
s. 17.		<i>Re</i> POPE, <i>Ex parte</i> DICKSEE . . . . .	40
CLARK v. BALM HILL AND SONS . . . . .	45	SHRAGER v. MARCH . . . . .	40
45 & 46 Vict. c. 50 ( <i>Municipal Corporations Act</i> , 1882).		s. 48 (1).	
TENBY CORPORATION v. MASON . . . . .	357	<i>Re</i> JOHNSON, <i>Ex parte</i> WRIGHT . . . . .	33, 545
s. 108.		s. 55 (6).	
CANTERBURY CORPORATION v. COOPER . . . . .	335	<i>Re</i> HOLMES, <i>Ex parte</i> ASHWORTH . . . . .	37, 333
45 & 46 Vict. c. 61 ( <i>Bills of Exchange Act</i> , 1882, s. 7 (3)).		ss. 57, 89.	
IRVINE v. NORTH AND SOUTH WALES BANK . . . . .	25	<i>Re</i> MACFADYEN, <i>Ex parte</i> GLASS . . . . .	29
MACBETH v. NORTH AND SOUTH WALES BANK . . . . .	25	s. 103.	
s. 20.		WOODHAM-SMITH v. EDWARDS . . . . .	481
GLENIE v. BRUCE SMITH . . . . .	43	s. 121.	
ss. 27, 29, 36.		<i>Re</i> WEIGHELL, <i>Ex parte</i> TABER . . . . .	34
HORNBY v. M'LAREN . . . . .	26	s. 142.	
s. 75.		<i>Re</i> FOLLOCK . . . . .	34
CURTICE v. LONDON CITY AND MIDLAND BANK . . . . .	25	s. 152.	
45 & 46 Vict. c. 75 ( <i>Married Women's Property Act</i> , 1882).		<i>In re</i> SIMON . . . . .	278
BIRKETT v. BIRKETT . . . . .	277	Sched. I. r. 12.	
s. 1 (5).		<i>Re</i> ATTREE, <i>Ex parte</i> WARD . . . . .	37
<i>In re</i> SIMON . . . . .	278	Sched. II. rr. 9—17.	
ss. 1 (3), (4), 4.		PEARCE v. BULLARD, KING & CO. . . . .	36
<i>Re</i> FIELDWICK, JOHNSON v. ADAMSON . . . . .	279	Sched. II. rr. 18.	
s. 12.		<i>Re</i> MACFADYEN, <i>Ex parte</i> VIZIAN-AGRAM CO., LD. . . . .	35
TINKLEY v. TINKLEY . . . . .	280	46 & 47 Vict. c. 57 ( <i>Patents, Designs and Trade Marks Act</i> , 1883), s. 32.	
		CRAIG v. DOWDING . . . . .	456
		s. 106.	
		ROYAL WARRANT HOLDERS ASSOCIATION v. SLADE & CO., LD. . . . .	645

# CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

COL.	COL.
46 & 47 Vict. c. cexi. ( <i>Portsmouth Corporation Act</i> , 1883), s. 31. LOCAL GOVERNMENT BOARD v. STREET . . . . . 270	51 & 52 Vict. c. 8 ( <i>Customs and Inland Revenue Act</i> , 1888), s. 4 (3). ATTORNEY-GENERAL v. YORKSHIRE (WOOLLEN DISTRICT) ELECTRIC TRAMWAYS CO., LD. . . . . 583 LATCHFORD v. KELSEY . . . . . 583
47 & 48 Vict. c. 61 ( <i>Judicature Act</i> , 1884), s. 14. SAVAGE v. NORTON . . . . . 27	51 & 52 Vict. c. 21 ( <i>Law of Distress Amendment Act</i> , 1888), s. 4. ADDISON v. SHEPHERD . . . . . 188 BOYD v. BILHAM . . . . . 188
47 & 48 Vict. c. 68 ( <i>Matrimonial Causes Act</i> , 1884), ss. 2, 5. LESLIE v. LESLIE . . . . . 290	51 & 52 Vict. c. 25 ( <i>Railway and Canal Traffic Act</i> , 1888), s. 27. CASTLE STEAM TRAWLERS, LD. v. GREAT WESTERN RY. CO. . . . . 507 GUERNSEY MUTUAL TRANSPORT CO., LD. v. LONDON, BRIGHTON, AND SOUTH COAST RY. CO. . . . . 506 HOLWELL IRON CO. v. MIDLAND RY. CO. . . . . 506
47 & 48 Vict. c. 70 ( <i>Municipal Elections (Corrupt and Illegal Practices) Act</i> , 1884), ss. 2, 3, 23. MORRIS v. TOWN CLERK OF SHREWSBURY . . . . . 204	51 & 52 Vict. c. 41 ( <i>Local Government Act</i> , 1888), s. 62. HOLSWORTHY URBAN DISTRICT COUNCIL v. HOLSWORTHY RURAL DISTRICT COUNCIL . . . . . 355
47 & 48 Vict. c. 76 ( <i>Post Office (Protection) Act</i> , 1884), s. 4. R. v. DE MARNEY . . . . . 144	s. 72. CANTERBURY CORPORATION v. COOPER . . . . . 335
48 & 49 Vict. c. 3 ( <i>Representation of the People Act</i> , 1884), s. 3. LASKEY v. MICHELMORE . . . . . 210	51 & 52 Vict. c. 42 ( <i>Mortmain Act</i> , 1888), s. 1. <i>In re</i> DEFENCE ACTS . . . . . 525
48 & 49 Vict. c. 49 ( <i>Submarine Telegraph Act</i> , 1885), Sched., art. 7. AGINCOURT STEAMSHIP CO. v. EASTERN, ETC. TELEGRAPH CO. . . . . 629	51 & 52 Vict. c. 43 ( <i>County Courts Act</i> , 1888), s. 66. EDWARDS v. MALLAN . . . . . 122 WOOD v. WEBER . . . . . 123
48 & 49 Vict. c. 69 ( <i>Criminal Law Amendment Act</i> , 1885), s. 13 (3). DUROSE v. WILSON . . . . . 137	ss. 88, 93, 113, 120. WESTGATE v. CROWE . . . . . 124
48 & 49 Vict. c. 75 ( <i>Prevention of Crimes (Amendment) Act</i> , 1885), s. 2. BASTABLE v. LITTLE . . . . . 624	s. 105. <i>Re</i> A DEBTOR, <i>Ex parte</i> THE CREDITOR . . . . . 30
49 & 50 Vict. c. 33 ( <i>International Copyright Act</i> , 1886). SARPY v. HOLLAND . . . . . 119 ss. 6, 11. JOSEPH WILLIAMS, LD. v. MOORE . . . . . 118	s. 119. CLINTON v. BENNETT . . . . . 123 FAWCETT v. HORSFIELD . . . . . 123
49 & 50 Vict. c. 88 ( <i>Riot (Damages) Act</i> , 1886), s. 2. FIELD v. RECEIVER OF METROPOLITAN POLICE . . . . . 135	s. 120. LIVERPOOL CORPORATION v. PETER WALKER & SON, LD. . . . . 321
49 & 50 Vict. c. 48 ( <i>Medical Act</i> , 1886), s. 26. BARNES v. BROWN . . . . . 407	s. 147. BOYD, LD. v. BILHAM . . . . . 188 ADDISON v. SHEPHERD . . . . . 188
50 & 51 Vict. c. 28 ( <i>Merchandise Marks Act</i> , 1886), ss. 2, 3, 11. R. v. BUTCHER . . . . . 643 ss. 2, 18. HOOPER v. RIDDLE & CO. . . . . 644	s. 158. BIRSTALL CANDLE CO. v. DANIELS, SAUNDERS CLAIMANT . . . . . 124
50 & 51 Vict. c. 29 ( <i>Margarine Act</i> , 1887), s. 3. WILKINSON v. ALTON . . . . . 240	51 & 52 Vict. c. 52 ( <i>Public Health (Buildings in Streets) Act</i> , 1888), s. 3. DAVIS v. CHISWICK URBAN DISTRICT COUNCIL . . . . . 360 R. v. BROMLEY URBAN DISTRICT COUNCIL . . . . . 360
50 & 51 Vict. c. 58 ( <i>Coal Mines Regulation Act</i> , 1887), s. 13 (1). THORPE v. DAVIES . . . . . 420 ss. 49, 50, 75. ANDERSON v. ATKINSON . . . . . 421	51 & 52 Vict. c. 59 ( <i>Trustee Act</i> , 1888), s. 8. <i>Re</i> FOUNTAINE, <i>Re</i> DOWLER; FOUNTAINE v. AMHERST . . . . . 656
50 & 51 Vict. c. cvii. ( <i>Weston-super-Mare Improvement Act</i> , 1887), ss. 79, 149. WILLIAMS v. WESTON-SUPER-MARE URBAN DISTRICT COUNCIL . . . . . 355	52 & 53 Vict. c. 14 ( <i>Town Police Clauses Act</i> , 1889), s. 3. R. v. FLETCHER . . . . . 621



# CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
52 & 53 Vict. c. 21 ( <i>Weights and Measures Act</i> , 1889), s. 21 (1).		53 & 54 Vict. c. 71 ( <i>Bankruptcy Act</i> , 1890), s. 8.	
KYLE <i>v.</i> DUNSDON . . . . .	671	<i>In re</i> VAN LAUN . . . . .	32
s. 29 (2).		<i>Re</i> WALMSLEY . . . . .	32
PAUL <i>c.</i> HARGREAVES . . . . .	671	54 & 55 Vict. c. 39 ( <i>Stamp Act</i> , 1891), ss. 1, 6.	
52 & 53 Vict. c. 45 ( <i>Factors Act</i> , 1889), s. 2.		ATTORNEY-GENERAL <i>v.</i> FELIX-STOWE GAS LIGHT CO. . . . .	535
OPPENHEIMER <i>v.</i> ATTENBOROUGH AND SONS . . . . .	10	ss. 1, 14 (4), 54.	
52 & 53 Vict. c. 49 ( <i>Arbitration Act</i> , 1889), ss. 1, 12.		INLAND REVENUE <i>v.</i> MAPLE & CO. (PARIS), LD. . . . .	534
<i>In re</i> COLMAN AND WATSON . . . . .	18, 486	s. 12.	
s. 4.		LORD ADVOCATE <i>v.</i> CALEDONIAN RY. CO. . . . .	535
DICKENS <i>v.</i> SPENCE . . . . .	19	s. 12, 88.	
MORRISTON TINPLATE CO. <i>v.</i> BROOKER, DORE & CO. . . . .	19, 122	LORD SUFFIELD <i>v.</i> INLAND REVENUE	538
SKINNER <i>v.</i> UZIELLI & CO., LD. . . . .	19	ss. 13, 54, 59.	
53 & 54 Vict. c. 5 ( <i>Lunacy Act</i> , 1890), s. 116.		DON FRANCESCO <i>v.</i> DE MEO . . . . .	535
<i>Re</i> AUCHMUTY . . . . .	365	ss. 32, 33. Sched. 1.	
ss. 116, 120, 124.		HODGKINS <i>v.</i> SIMPSON . . . . .	247
PLUMPTON <i>v.</i> BURKINSHAW . . . . .	365	UETTINGER <i>v.</i> COHN . . . . .	44, 539
ss. 116, 128.		ss. 33, 82, 122.	
<i>In re</i> DE MOLEYNS AND HARRIS' CONTRACT . . . . .	364	SPEYER BROS. <i>v.</i> INLAND REVENUE	537
ss. 116, 333.		s. 113.	
<i>In re</i> SPURLING . . . . .	365	GREAT NORTHERN, ETC. RY. CO. <i>v.</i> ATTORNEY-GENERAL . . . . .	536
s. 285 (1).		54 & 55 Vict. c. 76 ( <i>Public Health (London) Act</i> , 1891), ss. 2, 4, 40.	
R. <i>v.</i> DELVIN UNION . . . . .	366	FARMER <i>v.</i> LONG . . . . .	415
53 & 54 Vict. c. 29 ( <i>Intestates Act</i> , 1890), s. 1.		ss. 3, 4.	
<i>In re</i> CUFFE, FOOKS <i>v.</i> CUFFE . . . . .	182	WILSON'S MUSIC AND GENERAL PRINTING CO. <i>v.</i> FINSBURY BOROUGH COUNCIL . . . . .	414
53 & 54 Vict. c. 45 ( <i>Police Act</i> , 1890), s. 11.		s. 33.	
KYDD <i>v.</i> LIVERPOOL WATCH COMMITTEE . . . . .	358, 371, 487	WESTMINSTER CORPORATION <i>v.</i> GORDON HOTELS, LD. . . . .	416
LIVERPOOL WATCH COMMITTEE <i>v.</i> KYDD . . . . .	358	54 & 55 Vict. c. cexix. ( <i>Midland Railway Company's Act</i> , 1891), s. 4, Sched. Part IV.	
53 & 54 Vict. c. 59 ( <i>Public Health Acts Amendment Act</i> , 1890), s. 19.		MIDLAND RY. CO. <i>v.</i> MYERS, ROSE & CO., LD. . . . .	504
BROMLEY CORPORATION <i>v.</i> CHESHIRE . . . . .	564	54 & 55 Vict. c. ccxxii. ( <i>Great Western Railway Company's Act</i> , 1891), s. 6.	
WOOD GREEN URBAN DISTRICT COUNCIL <i>v.</i> JOSEPH. . . . .	563	GREAT WESTERN RY. CO. <i>v.</i> PHILLIPS . . . . .	503
53 & 54 Vict. c. 62 ( <i>Companies (Memorandum of Association) Act</i> , 1890), s. 1.		55 & 56 Vict. c. 9 ( <i>Gaming Act</i> , 1892).	
<i>In re</i> JEWISH COLONIAL TRUST, LD. . . . .	82	GOODSON <i>v.</i> BAKER . . . . .	249
<i>In re</i> TRUST AND AGENCY CO. OF AUSTRALASIA, LD. . . . .	82	55 & 56 Vict. c. 13 ( <i>Conveyancing Act</i> , 1892), s. 3.	
53 & 54 Vict. c. 63 ( <i>Companies (Winding-up) Act</i> , 1890), ss. 1, 3.		ANDREW <i>v.</i> BRIDGMAN . . . . .	341
<i>In re</i> PORTSMOUTH AND DISTRICT VACUUM CLEANER CO., LD. . . . .	84	JENKINS <i>v.</i> PRICE . . . . .	341
s. 8.		55 & 56 Vict. c. 32 ( <i>Clergy Discipline Act</i> , 1892), ss. 2, 4, 9.	
BOTTOMLEY <i>v.</i> BROUGHAM . . . . .	346	CHESNEY <i>v.</i> NEWSHOLME . . . . .	197
53 & 54 Vict. c. 69 ( <i>Settled Land Act</i> , 1890), s. 5.		55 & 56 Vict. c. 57 ( <i>Private Street Works Act</i> , 1892), ss. 7, 8 (1), 10.	
<i>In re</i> BROTHERTON . . . . .	559	BRIDGWATER CORPORATION <i>v.</i> STONE . . . . .	268
s. 10 (2).		ss. 7, 8, 14.	
<i>In re</i> WYTHES, WEST <i>v.</i> WYTHES	559	FOLKESTONE CORPORATION <i>v.</i> ROOK	269
s. 13.		56 & 57 Vict. c. 53 ( <i>Trustee Act</i> , 1893), s. 1.	
<i>In re</i> GURNEY'S SETTLEMENT . . . . .	555	<i>In re</i> BURKE . . . . .	656
s. 15.			
<i>In re</i> EARL OF EGMONT'S SETTLEMENT . . . . .	555		
<i>In re</i> WORMALD'S SETTLED ESTATES	555		

# CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
56 & 57 Vict. c. 53 ( <i>Trustee Act</i> , 1893), ss. 8, 9.		57 & 58 Vict. c. 16 ( <i>Judicature Act</i> , 1894),	
SHAW v. CATES . . . . .	656	s. 1 (4).	
s. 10.		<i>In re</i> COLMAN AND WATSON . . . . .	18, 486
<i>Re</i> BOUCHERETT . . . . .	654	<i>In re</i> MARCHANT . . . . .	486
ss. 10, 25.		57 & 58 Vict. c. 24 ( <i>Wild Birds Protection</i>	
<i>In re</i> ROUTLEDGE . . . . .	655	<i>Act</i> , 1894), s. 4 (1).	
s. 18.		DUNCAN v. KNILL . . . . .	16
<i>In re</i> EARL OF EGDMONT'S TRUSTS . . . . .	556	57 & 58 Vict. c. 30 ( <i>Finance Act</i> , 1894),	
s. 42.		ss. 1, 2.	
<i>In re</i> SALAMAN; DE PASS v.		WINANS v. R. . . . .	161
SONNENTHAL . . . . .	690	s. 2 (1).	
s. 44.		<i>In re</i> BOWERMAN; PORTER v.	
<i>In re</i> COLEMAN . . . . .	561	BOWERMAN . . . . .	162
<i>Re</i> EARDLEY AND BIRKE'S SETTLE-		ss. 6 (2), 8 (4).	
MENTS . . . . .	562	<i>In re</i> SPENCER COOPER; POË v.	
56 & 57 Vict. c. 61 ( <i>Public Authorities Pro-</i>		SPENCER COOPER . . . . .	161, 696
<i>tection Act</i> , 1893), s. 1.		s. 7 (1).	
GAWLEY v. BELFAST CORPORATION	497	ATTORNEY-GENERAL v. DUKE OF	
HAGUE v. DONCASTER RURAL DIST-		RICHMOND . . . . .	164
RICT COUNCIL . . . . .	498	s. 9 (1).	
HEWLETT v. LONDON COUNTY		<i>In re</i> HADLEY . . . . .	162
COUNCIL . . . . .	498	<i>In re</i> ORLEBAR; WYNIER v.	
HOLSWORTHY URBAN DISTRICT		ORLEBAR . . . . .	162
COUNCIL v. HOLSWORTHY RURAL		57 & 58 Vict. c. 54 ( <i>Railway and Canal</i>	
DISTRICT COUNCIL. . . . .	355, 496	<i>Traffic Act</i> , 1894), s. 1.	
PEARSON v. DUBLIN CORPORATION	496	NORTH STAFFORDSHIRE COLLIERY	
"THE JOHANNESBURG" . . . . .	497	OWNERS ASSOCIATION v. NORTH	
"THE BURNS" . . . . .	496	STAFFORDSHIRE RY. CO. . . . .	505
WALSH v. SOUTHWARK BOROUGH		57 & 58 Vict. c. 57 ( <i>Diseases of Animals Act</i> ,	
COUNCIL . . . . .	497	1894), s. 46.	
56 & 57 Vict. c. 71 ( <i>Sale of Goods Act</i> , 1893),		"THE SUEVIC" . . . . .	13
s. 2.		57 & 58 Vict. c. 60 ( <i>Merchant Shipping Act</i> ,	
NASH v. INMAN . . . . .	300	1894), ss. 24, 31, 56, 57.	
s. 14 (1).		BURGISS v. CONSTANTINE . . . . .	570
CRICHTON AND STEVENSON v. LOVE	545	ss. 33, 56, 57.	
ss. 16, 18, 62.		BARCLAY & Co., LD. v. POOLE . . . . .	571
LAING & Co. v. BARCLAY & Co. . . . .	544	s. 85.	
s. 26.		CAIRN LINE, LD. v. TRINITY	
BIRSTALL CANDLE CO. v. DANIELS . . . . .	124	HOUSE . . . . .	607
s. 30 (3).		ss. 113, 114, 115.	
AITKEN, CAMPBELL & Co. v.		BOARD OF TRADE v. BAXTER . . . . .	573
BOULLEN . . . . .	544	s. 134.	
ss. 44, 45, 46.		PALACE SHIPPING CO. v. CAINE . . . . .	572
<i>Re</i> JOHNSON; <i>Ex parte</i> WRIGHT 2, 545		s. 186.	
ss. 51, 62.		ATTORNEY-GENERAL v. FARGROVE	
MORGAN v. RUSSELL & Co. . . . .	543	STEAM NAVIGATION CO., LD. . . . .	573
56 & 57 Vict. c. 73 ( <i>Local Government Act</i> ,		s. 225.	
1894), ss. 1 (3), 36 (2).		CARÔE v. BAYLISS . . . . .	572
WEST HAM UNION v. EDMONTON		s. 419.	
UNION . . . . .	465	"THE JAMES JOICEY" v. "THE	
ss. 5, 33, 52 (5).		KOSTRENA" . . . . .	590
BOWDEN v. NEW MILLS URBAN		s. 502.	
DISTRICT COUNCIL. . . . .	464	GREENSHIELDS, COWIE & Co. v.	
s. 14 (5).		STEPHENS AND SONS . . . . .	314
<i>In re</i> BERKHAMSTED GRAMMAR		s. 502 (ii).	
SCHOOL . . . . .	201	SMITTON v. ORIENT STEAM NAVI-	
s. 46 (1) (d) (8).		GATION CO., LD. . . . .	55
CRUMP v. LEWIS . . . . .	359	ss. 503, 504.	
s. 58 (5).		SIR JOHN JACKSON, LD. v. OWNERS	
R. v. BRADFORD-ON-AVON RURAL		OF "THE BLANCHE"; THE HOPPER	
DISTRICT COUNCIL. . . . .	362	No. 66 . . . . .	7
s. 72 (4).			
MIDDLESEX COUNTY COUNCIL v.			
KINGSBURY URBAN DISTRICT			
COUNCIL . . . . .	362		

# CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
57 & 58 Vict. c. clxxxvii. ( <i>Thames Conservancy Act</i> , 1894), ss. 3, 83, 160, 161, 165.		60 & 61 Vict. c. 37 ( <i>Workmen's Compensation Act</i> , 1897), s. 1 (2) (c).	
QUEENS OF RIVER STEAMSHIP CO. v. THAMES CONSERVATORS . . . . .	663	MITCHELL v. WHITTON . . . . .	394
s. 77.		s. 1 (2) (4).	
"THE SEA SPRAY" . . . . .	608	COHEN v. SEABROOK BROS. . . . .	381
"THE WALLSEND" . . . . .	600	CHIEF v. KYNCHS, LD. . . . .	381
s. 289.		MACKAY v. ROSIE . . . . .	380
STEWART v. THAMES CONSERVATORS	295	s. 1 (4).	
57 & 58 Vict. c. cccxiii. ( <i>London Building Act</i> , 1894), s. 22.		GREENWOOD v. GREENWOOD . . . . .	400
LILLEY AND LILLEY AND SKINNER, LD. v. LONDON COUNTY COUNCIL	410	s. 2.	
FLEMING v. LONDON COUNTY COUNCIL . . . . .	411	THOMPSON v. GOOLD & CO. . . . .	384
s. 31.		s. 7.	
LONDON COUNTY COUNCIL v. COAL CO-OPERATIVE SOCIETY, LD. . . . .	411	BENSON v. METROPOLITAN ASYLUMS BOARD . . . . .	387
s. 49.		MORGAN v. TYDVIL ENGINEERING CO. . . . .	395
ATTORNEY-GENERAL v. METCALF AND GREIG . . . . .	413	Sched. I. (1) (b).	
ss. 88—91.		LEE v. BAIRD & CO. LD. . . . .	384
ADAMS v. MARYLEBONE BOROUGH COUNCIL . . . . .	413	Sched. I. (12).	
s. 145 (a).		DONNELLY v. BAIRD & CO., LD. . . . .	394
COUNTY OF LONDON ELECTRIC SUPPLY CO., LD. v. PERKINS . . . . .	412	Sched. II. (8) (10).	
58 & 59 Vict. c. 16 ( <i>Finance Act</i> , 1895).		JOHNSTON v. MEW, LANGTON & CO. . . . .	393
s. 12.		LAWRIE v. BROWN & CO., LD. . . . .	393
ATTORNEY-GENERAL v. FELIXSTOWE GAS LIGHT CO. . . . .	535	60 & 61 Vict. c. ccliv. ( <i>Norwich Electric Tramways Act</i> , 1897), s. 57 (5).	
LORD ADVOCATE v. CALEDONIAN RY. CO. . . . .	535	<i>In re</i> NORWICH CORPORATION AND NORWICH ELECTRIC TRAMWAYS CO., LD. . . . .	647
58 & 59 Vict. c. 39 ( <i>Summary Jurisdiction (Married Women) Act</i> , 1895), s. 4.		60 & 61 Vict. c. cclx. ( <i>Bradford Tramways and Improvement Act</i> , 1897), s. 66.	
HOLT v. HOLT . . . . .	293	R. v. WRIGHT . . . . .	371
HARRIMAN v. HARRIMAN . . . . .	284	61 & 62 Vict. c. 29 ( <i>Locomotives Act</i> , 1898), s. 12.	
JUDD v. JUDD . . . . .	282	GEIRIONYDD RURAL DISTRICT COUNCIL v. GREEN . . . . .	263
ROYLE v. ROYLE . . . . .	294	s. 12 (1).	
WILSON v. WILSON . . . . .	284	BROMLEY RURAL DISTRICT COUNCIL v. CROYDON CORPORATION . . . . .	264
59 & 60 Vict. c. 25 ( <i>Friendly Societies Act</i> , 1896), s. 56 (1).		REIGATE RURAL DISTRICT COUNCIL v. SUTTON DISTRICT WATER CO. . . . .	265
CARDIFF UNION v. BANKS . . . . .	464	ss. 12, 17.	
MORTON v. FRENCH . . . . .	243	KENT COUNTY COUNCIL v. KENT COAL CONCESSIONS, LD. . . . .	263
s. 68 (5).		R. v. BATH COUNTY COURT JUDGE . . . . .	265
CATT v. WOOD . . . . .	243	61 & 62 Vict. c. 36 ( <i>Criminal Evidence Act</i> , 1898), s. 1 (f) (ii).	
59 & 60 Vict. c. 31 ( <i>Land Law (Ireland) Act</i> , 1896), ss. 31 (4), 33 (4).		R. v. SHEEHAN . . . . .	128
DE VESCI v. O'CONNELL . . . . .	483	61 & 62 Vict. c. 44 ( <i>Merchant Shipping Act</i> , 1898), s. 5.	
59 & 60 Vict. c. 35 ( <i>Judicial Trustee Act</i> , 1896), s. 3.		CAIRN LINE v. TRINITY HOUSE . . . . .	607
SHAW v. CATES . . . . .	656	61 & 62 Vict. c. 60 ( <i>Inebriates Act</i> , 1898), s. 2 (1).	
59 & 60 Vict. c. 36 ( <i>Locomotives on Highways Act</i> , 1896), s. 1.		R. v. BRIGGS . . . . .	134
HINDLE AND PALMER v. NOBLETT . . . . .	624	62 & 63 Vict. c. 3 ( <i>Board of Education Act</i> , 1899), s. 2 (2).	
R. v. WILBRAHAM . . . . .	625	<i>In re</i> BETTON'S CHARITY . . . . .	59
STAR OMNIBUS CO. v. TAGG . . . . .	625	62 & 63 Vict. c. 14 ( <i>London Government Act</i> , 1899), ss. 2, 4, 10, 15, 34.	
59 & 60 Vict. c. cccxlv. ( <i>Barry Urban District Council Act</i> , 1896), s. 81.		ANDERSON v. WANDSWORTH BOROUGH COUNCIL . . . . .	52
MOORMAN v. TORDOFF . . . . .	356	ss. 4, 23.	
60 & 61 Vict. c. 37 ( <i>Workmen's Compensation Act</i> , 1897), s. 1 (1).		WESTMINSTER CORPORATION v. RECTOR, ETC., OF ST. GEORGE, HANOVER SQUARE . . . . .	53
GRANT v. GLASGOW AND SOUTH WESTERN RY. CO. . . . .	390		
MALONE v. CAYZER, IRVINE & CO. . . . .	379		



# CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

		COL.			COL.
62 & 63	Vict. c. 14 ( <i>London Government Act</i> , 1899), s. 6. <i>Ex parte</i> WOOLWICH CORPORATION	98	63 & 64	Vict. c. 51 ( <i>Money-lenders Act</i> , 1900), s. 6. NEWTON <i>v.</i> PYKE . . . . .	425
ss. 6, 7, 28.	R. <i>v.</i> LOCAL GOVERNMENT BOARD	418	63 & 64	Vict. c. cclxxiii. ( <i>Metropolitan District Railway Act</i> , 1900), s. 55. KING <i>v.</i> METROPOLITAN DISTRICT RY. CO. . . . .	650
s. 8 (3).	EVANS <i>v.</i> BATTERSEA BOROUGH COUNCIL . . . . .	514	1 Edw. 7, c. 22 ( <i>Factory and Workshop Act</i> , 1901), ss. 135, 136, 146. R. <i>v.</i> TAYLOR . . . . .	228	
s. 11 (1).	R. <i>v.</i> BERMONDSEY BOROUGH COUNCIL . . . . .	465, 515	s. 149. BENSON <i>v.</i> METROPOLITAN ASYLUMS BOARD . . . . .	387	
62 & 63	Vict. c. 51 ( <i>Sale of Food and Drugs Act</i> , 1899), s. 1. FOOT <i>v.</i> FINDLAY . . . . .	240	1 Edw. 7, c. 27 ( <i>Intoxicating Liquors (Sale to Children) Act</i> , 1901), s. 2. FARNDALE <i>v.</i> DILTON . . . . .	325	
ss. 1, 20 (3), 25, 28.	KELLY <i>v.</i> LONSDALE . . . . .	236	GREIG <i>v.</i> MACLEOD . . . . .	325	
ss. 1, 25.	R. <i>v.</i> OTTO MONSTED, LD. . . . .	240, 371	JONES <i>v.</i> SHERVINGTON . . . . .	325	
s. 2 (1).	FALCONER <i>v.</i> WHYTE . . . . .	233	2 Edw. 7, c. 28 ( <i>Licensing Act</i> , 1902), s. 4. LAWSON <i>v.</i> EDMONSON . . . . .	324	
s. 4 (1).	ELDER <i>v.</i> DRYDEN . . . . .	234	THOMPSON <i>v.</i> M'KENZIE . . . . .	324	
62 & 63	Vict. c. cxvii. ( <i>Loughborough Corporation Act</i> , 1899), s. 62. MORRIS AND BASTERT <i>v.</i> LOUGHBOROUGH CORPORATION . . . . .	211	s. 11 (4). R. <i>v.</i> MERIONETHSHIRE JJ. . . . .	322	
63 & 64	Vict. c. 15 ( <i>Burial Act</i> , 1900), ss. 3, 12. ANDERSON <i>v.</i> WANDSWORTH BOROUGH COUNCIL . . . . .	52	s. 16 (3). R. <i>v.</i> BATH JJ. . . . .	322	
63 & 64	Vict. c. 48 ( <i>Companies Act</i> , 1900), ss. 4, 5. BURTON <i>v.</i> BEVAN . . . . .	87	2 Edw. 7, c. 41 ( <i>Metropolis Water Act</i> , 1902), ss. 2, 24, 37, 45. METROPOLITAN WATER BOARD <i>v.</i> SOLOMON . . . . .	341	
ss. 4, 5.	<i>In re</i> NATIONAL MOTOR MAIL COACH CO., LD. . . . .	88	2 Edw. 7, c. 42 ( <i>Elementary Education Act</i> , 1902), ss. 7, 16. WILFORD <i>v.</i> WEST RIDING COUNTY COUNCIL . . . . .	199	
ss. 4, 10.	<i>In re</i> WEST YORKSHIRE DARRACQ AGENCY, LD. . . . .	88	3 Edw. 7, c. 18 ( <i>Pistols Act</i> , 1903), ss. 2, 3. BRYSON <i>v.</i> GAMAGE, LD. . . . .	460	
s. 6 (3).	NEW DRUCE PORTLAND CO., LD. <i>v.</i> BLAKISTON . . . . .	68	3 Edw. 7, c. 36 ( <i>Motor Car Act</i> , 1903), s. 1. DU CROS <i>v.</i> LAMBOURNE . . . . .	622	
s. 14.	BRISTOL UNITED BREWERIES <i>v.</i> ABBOTT . . . . .	72	ss. 1, 9. WELTON <i>v.</i> TANEBORNE . . . . .	622	
CUNARD STEAMSHIP CO. <i>v.</i> HOPWOOD . . . . .		73	ss. 3, 9. MARSHALL <i>v.</i> FORD . . . . .	623	
<i>In re</i> NEW LONDON AND SUBURBAN OMNIBUS CO., LD. . . . .		72	s. 4. R. <i>v.</i> LYNDON . . . . .	623	
<i>In re</i> RENSHAW & CO., LD. . . . .		71	R. <i>v.</i> MARSHAM . . . . .	622	
<i>In re</i> YOLLAND, HUSSON <i>v.</i> BIRKET, LD. . . . .		71	s. 9. JESSOP <i>v.</i> CLARKE . . . . .	623	
s. 25. <i>In re</i> NEW DE KAAP, LD. . . . .		91	3 Edw. 7, c. 46 ( <i>Revenue Act</i> , 1903), s. 7. LORD SUFFIELD <i>v.</i> INLAND REVENUE . . . . .	538	
63 & 64	Vict. c. 51 ( <i>Money-lenders Act</i> , 1900), s. 1. <i>Re</i> ATTREE; <i>Ex parte</i> WARD . . . . .	37	3 Edw. 7, c. cxxvii. ( <i>Beckenham Urban District Council Act</i> , 1903), s. 126. BLOOR <i>v.</i> BECKENHAM URBAN DISTRICT COUNCIL . . . . .	269	
ELDRIDGE <i>v.</i> BROSSARD . . . . .		427	4 Edw. 7, c. 15 ( <i>Prevention of Cruelty to Children Act</i> , 1904), ss. 1, 23. R. <i>v.</i> CONNOR . . . . .	136	
LAZARUS <i>v.</i> SMITH . . . . .		428, 474	4 Edw. 7, c. 23 ( <i>Licensing Act</i> , 1904), s. 1. MOORE <i>v.</i> TOWER JJ. . . . .	319	
BLAIR <i>v.</i> BUCKWORK . . . . .		427	s. 1 (2). HOWE <i>v.</i> NEWINGTON JJ. . . . .	321	
s. 2. CHAPMAN <i>v.</i> MICHAELSON . . . . .		426			
<i>Re</i> A DEBTOR; <i>Ex parte</i> CARDEN . . . . .		33			
KING <i>v.</i> TURNBULL . . . . .		426			
KING <i>v.</i> BARNETT . . . . .		427			
KING <i>v.</i> MASSEY . . . . .		427			

# CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
4 Edw. 7, c. 23 ( <i>Licensing Act</i> , 1904), s. 2.		6 Edw. 7, c. 55 ( <i>Public Trustee Act</i> , 1906), s. 5 (1).	
<i>In re</i> LASSELLS AND SHARMAN, LD.	321	<i>In re</i> KENSIT.	654
LIVERPOOL CORPORATION v. PETER WALKER & Co., LD.	321		
s. 3.		6 Edw. 7, c. 58 ( <i>Workmen's Compensation Act</i> , 1906), s. 1 (1).	
WADDLE v. SUNDERLAND UNION ASSESSMENT COMMITTEE	517	BEDDERICK v. LONDON COUNTY COUNCIL	380
s. 4 (2).		BURLEY v. BAIRD	388
GRON v. HESKETH	326	CREMINS v. GUEST, KEEN, AND NETTLEFOLD, LD.	391
4 Edw. 7, c. 31 ( <i>Shop Hours Act</i> , 1904), ss. 1, 2, 3.		DICKINSON v. BARMACK, LD.	383
ATTORNEY-GENERAL v. BRIGHTON CORPORATION	500	FITZGERALD v. CLARK AND SON	391
4 Edw. 7, c. ccciii. ( <i>Thames River Steamboat Service Act</i> , 1904), s. 15.		GRANT v. GLASGOW AND SOUTH WESTERN RY. CO.	390
LONDON COUNTY COUNCIL v. GENERAL STEAM NAVIGATION CO., LD.	663	HAPELMAN v. POOLE	389
5 Edw. 7, c. 15 ( <i>Trade Marks Act</i> , 1905), s. 3.		ISMAY, IMRIE & Co. v. WILLIAMSON	379
MAJOR BROS. v. FRANKLIN AND SON	639	M'INNES v. DUNSMUIR	378
ss. 3, 8, 9.		M'DONALD v. OWNERS OF "BANANA"	388
<i>In re</i> UNITED STATES PLAYING CARD CO.	638	MALONE v. CAYZER, IRVINE & Co.	379
ss. 3, 9, 35, 36.		MARTIN v. FULLERTON	390
<i>In re</i> GESTETNER	639	MOORE v. MANCHESTER LINERS	390
PHILIPPART v. WM. WHITELEY, LD.	641	MULLEN v. STEWART & Co.	392
s. 9 (5).		REED v. GREAT WESTERN RY. CO.	388
<i>Re</i> NATIONAL STARCH CO.	641	ROBERTSON v. ALLAN BROS. & Co.	389
s. 11.		ROWLAND v. WRIGHT	387
<i>In re</i> MCGLENNON	640	WHITEHEAD v. ARNOLD	391
ss. 11, 15.			
<i>In re</i> ALBERT BAKER & Co., LD.	640	s. 1 (2) (c).	
5 Edw. 7, c. 58 ( <i>Unemployed Workmen Act</i> , 1905), s. 1.		GERGE v. GLASGOW COAL CO.	395
PORTON v. CENTRAL (UNEMPLOYED) BODY	399	ss. 3, 15.	
ss. 1 (1), 2 (1).		WALLACE v. HAWTHORNE, LESLIE & Co.	400
CRUMP v. LEWIS	359		
5 Edw. 7, c. cclx. ( <i>London Building Acts Amendment Act</i> , 1905), ss. 7, 22, 24.		s. 4.	
LONDON COUNTY COUNCIL v. SPINK AND SON, LD.	410	ANDREW v. ANDREWS AND MEARS	386
6 Edw. 7, c. 34 ( <i>Prevention of Corruption Act</i> , 1906), s. 1.		DITTMAR v. WILSON, SONS & Co.	398
GRAHAM v. HART	134	MULROONEY v. TODD AND BRADFORD CORPORATION	396
6 Edw. 7, c. 43 ( <i>Street Betting Act</i> , 1906), s. 1 (1).		ZUGG v. CUNNINGHAM, LD.	395
R. v. STONE	250		
6 Edw. 7, c. 47 ( <i>Trades Disputes Act</i> , 1906), s. 2 (1).		s. 6 (1).	
R. v. WALL	136	PAGE v. BURTWELL	380
s. 3.		s. 7 (2).	
CONWAY v. WADE	635	GILL v. ABERDEEN STEAM TRAWLING CO.	399
s. 4.		s. 8 (1) (2).	
BUSSY v. AMALGAMATED SOCIETY OF RAILWAY SERVANTS	634	HAYLETT v. VIGOR & Co.	379
GRAY v. ALLISON	624	s. 13.	
RICKARDS v. BARTRAM	634	BARGEWELL v. DANIEL	396
SMITHIES v. NATIONAL ASSOCIATION OF PLASTERERS	618	BURNS v. MANCHESTER, ETC.	399
		MISSION	399
		COZENS v. RUTHERFORD	397
		DEWHURST v. MATHER	397
		DOTHIE v. M'ANDREW & Co.	398
		HILL v. BEGG	397
		KELLY v. HOPKINS	385
		LINDSAY v. M'GLASHAN	386
		MULROONEY v. TODD AND BRADFORD CORPORATION	396
		MURPHY v. ENNISCORTHY GUARDIANS	396
		PORTON v. CENTRAL UNEMPLOYED BODY	399
		RENNIE v. REED	397
		RINTOUL v. DALMENY OIL CO., LD.	386
		SCHIFFIELD v. ORRELL COLLIERY CO.	385

# CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
6 Edw. 7, c. 58 ( <i>Workmen's Compensation Act</i> , 1906), Sched. I. (1) (2).		7 Edw. 7, c. 23 ( <i>Criminal Appeal Act</i> , 1907), s. 9 (6).	
ANSLOW <i>v.</i> CANNOCK CHASE COLLIERY CO. . . . .	383	R. <i>v.</i> LOVETT . . . . .	151
GOUGH <i>v.</i> CRAWSHAY BROS., LD. . . . .	381	R. <i>v.</i> MARTIN . . . . .	151
PENN <i>v.</i> SPIERS AND POND, LD. . . . .	382	R. <i>v.</i> MORTIMER . . . . .	151
PERRY <i>v.</i> WRIGHT . . . . .	383	s. 10.	
ROSENGVIST <i>v.</i> BOWRING & CO. . . . .	382	R. <i>v.</i> CRAWLEY . . . . .	146
WARNOCKEN <i>v.</i> MORELAND & SON, LD. . . . .	394	s. 11 (1).	
Sched. I. (16).		R. <i>v.</i> DUNLEAVEY . . . . .	156
SOUTHBROOK FIRE CLAY CO., LD. <i>v.</i> LAUGHLAN . . . . .	394	s. 14 (2).	
Sched. II. (4).		R. <i>v.</i> MEYER . . . . .	151
CLAYTON <i>v.</i> JONES' SEWING MACHINE CO., LD. . . . .	392	s. 14 (3).	
Sched. II. (9).		R. <i>v.</i> GYLEE . . . . .	156
MURRAY <i>v.</i> GOURLAY . . . . .	385	R. <i>v.</i> PETERS . . . . .	147
RHODES <i>v.</i> SOOTHILL WOOD COLLIERY CO., LD. . . . .	385	s. 16.	
6 Edw. 7, c. cxliii. ( <i>Wolstanton Gas Act</i> , 1906), s. 9.		R. <i>v.</i> RUTTER . . . . .	145
<i>In re</i> WOLSTANTON URBAN DISTRICT COUNCIL AND BURSLEM CORPORATION . . . . .	254	s. 17.	
7 Edw. 7, c. 12 ( <i>Matrimonial Causes Act</i> , 1907), s. 1.		R. <i>v.</i> MUNNS . . . . .	56
SHARPE <i>v.</i> SHARPE . . . . .	291	s. 20 (2).	
7 Edw. 7, c. 21 ( <i>Butter and Margarine Act</i> , 1907), s. 5.		R. <i>v.</i> BROWN . . . . .	157
FOOT <i>v.</i> FINDLAY . . . . .	240	7 Edw. 7, c. 29 ( <i>Patents and Designs Act</i> , 1907), s. 18.	
7 Edw. 7, c. 23 ( <i>Criminal Appeal Act</i> , 1907).		<i>In re</i> JOHNSON'S PATENT . . . . .	455
R. <i>v.</i> WEAVER . . . . .	147	s. 22.	
s. 3 (b).		<i>In re</i> KLABER AND STEINBURG'S PATENT . . . . .	456
R. <i>v.</i> BAKER . . . . .	146	7 Edw. 7, c. 47 ( <i>Deceased Wife's Sister's Marriage Act</i> , 1907), ss. 1, 4.	
R. <i>v.</i> HAWES . . . . .	144	BANISTER <i>v.</i> THOMPSON . . . . .	196, 276
s. 3 (c).		7 Edw. 7, c. 50 ( <i>Companies Act</i> , 1907), s. 15.	
R. <i>v.</i> LORD . . . . .	149	FITZGERALD <i>v.</i> PERSSE, LD. . . . .	74
s. (1).		<i>In re</i> NEW LONDON AND SUBURBAN OMNIBUS CO., LD. . . . .	72
R. <i>v.</i> COLEMAN . . . . .	153	7 Edw. 7, c. 53 ( <i>Public Health Acts Amendment Act</i> , 1907), s. 86 (2).	
R. <i>v.</i> DYSON . . . . .	155	TOPPIN <i>v.</i> MARCUS . . . . .	134
R. <i>v.</i> HAMPSHIRE . . . . .	150	7 Edw. 7, c. cxl. ( <i>City of London (Union of Parishes) Act</i> , 1907).	
R. <i>v.</i> JOYCE . . . . .	153	WAGSTAFF <i>v.</i> LONDON CORPORATION . . . . .	199
R. <i>v.</i> LEE . . . . .	155	7 Edw. 7, c. clxxiv. ( <i>Metropolitan Water Board Act</i> , 1907), s. 53.	
R. <i>v.</i> MACK . . . . .	149	METROPOLITAN WATER BOARD <i>v.</i> SOLOMON . . . . .	342
R. <i>v.</i> MEYER . . . . .	154		
R. <i>v.</i> NICHOLLS . . . . .	155		
R. <i>v.</i> OSBORNE . . . . .	150		
R. <i>v.</i> SOVOSKI . . . . .	154, 156		
R. <i>v.</i> WARNER . . . . .	155		
R. <i>v.</i> WESTACOTT . . . . .	150		
R. <i>v.</i> WINKWORTH . . . . .	149		
R. <i>v.</i> WILLIAMSON . . . . .	149		
s. 4 (3).			
R. <i>v.</i> GEORGE . . . . .	148		
R. <i>v.</i> HAMILTON . . . . .	149		
R. <i>v.</i> JONES . . . . .	146		
R. <i>v.</i> KIRKPATRICK . . . . .	131		
R. <i>v.</i> MAURICE . . . . .	145		
R. <i>v.</i> MORTON . . . . .	145		
R. <i>v.</i> NUTTALL . . . . .	147		
R. <i>v.</i> SIDLOW . . . . .	147		
R. <i>v.</i> SYRES . . . . .	148		
s. 5 (4).			
R. <i>v.</i> JEFFERSON . . . . .	153		
s. 9 (6).			
R. <i>v.</i> ATKINS . . . . .	151		
R. <i>v.</i> LAWS . . . . .	152		

## B.—COLONIAL STATUTES.

### AUSTRALIA.

#### Commonwealth.

63 & 64 Vict. c. 12 ( <i>Constitution Act</i> , 1900), s. 74.	
COMMISSIONERS OF TAXATION <i>v.</i> BANKS . . . . .	484
No. 6 of 1903 ( <i>Judiciary Act</i> , 1903), s. 39.	
COMMISSIONERS OF TAXATION <i>v.</i> BANKS . . . . .	484

### NEW SOUTH WALES.

43 Vict. No. 3 ( <i>Sydney Corporation Act</i> , 1879), s. 238.	
SYDNEY MUNICIPAL COUNCIL <i>v.</i> COOK . . . . .	5



CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
48 Vict. No. 18 ( <i>Crown Lands Act</i> , 1884), s. 7. CHIPPENDALL v. LAWLEY & Co. . . . .	169	Canada <i>Temperance Act</i> , 1888, s. 10. TOWNSEND v. COX . . . . .	173
54 Vict. No. 30 ( <i>Moore Street Improvement Act</i> , 1890), s. 26. SYDNEY MUNICIPAL COUNCIL v. COOK . . . . .	5	<i>Dominion Railway Act</i> , 1888, ss. 187, 188. TORONTO CORPORATION v. CANA- DIAN PACIFIC RY. CO. . . . .	172
2 Edw. 7, No. 32 ( <i>Constitution Act</i> , 1902), s. 15. HARNETT v. CRICK . . . . .	170	<i>Revised Statutes of Canada</i> , 1906, c. 139, ss. 35, 36. CROWN GRAIN CO. AND ATTORNEY- GENERAL FOR MANITOBA v. DAY AND ATTORNEY - GENERAL FOR CANADA . . . . .	172
2 Edw. 7, No. 35 ( <i>Sydney Corporation Act</i> , 1902), s. 211. SYDNEY MUNICIPAL COUNCIL v. COOK . . . . .	5	BRITISH COLUMBIA.	
2 Edw. 7, No. 49 ( <i>Life, Fire and Marine Insurance Act</i> , 1902), s. 4. ATTORNEY-GENERAL v. CURATOR OF INTERSTATES' ESTATES . . . . .	169	<i>Revised Statutes</i> , c. 115, s. 2. WATTS v. ATTORNEY-GENERAL FOR BRITISH COLUMBIA . . . . .	174
SOUTH AUSTRALIA.		ONTARIO.	
1880, Act No. 191 ( <i>Licensed Victuallers Act</i> , 1880), s. 10. McGRATH v. ADELAIDE JUSTICES . . . . .	170	<i>Revised Statutes</i> , c. 23, ss. 20, 26. M'CONNELL v. BEATTY . . . . .	176
1905, Act No. 897 ( <i>Local Option Act</i> , 1905). McGRATH v. ADELAIDE JUSTICES . . . . .	170	<i>Revised Statutes</i> , c. 24, s. 4. WOODRUFF v. ATTORNEY-GENERAL FOR ONTARIO . . . . .	175
RIEKEN v. YORKE JUSTICES . . . . .	170	<i>Revised Statutes</i> , c. 136, s. 87. M'VITY v. TRANOUTH . . . . .	175
KEAM v. YORKE JUSTICES . . . . .	170	<i>Revised Statutes</i> , c. 193, s. 184. M'CONNELL v. BEATTY . . . . .	176
WESTERN AUSTRALIA.		<i>Revised Statutes</i> , c. 224, ss. 184, 193. TORONTO CORPORATION v. RUSSELL	176
56 Vict. c. 14 ( <i>Land Transfer Act</i> , 1893), s. 207. SPENCER v. REGISTRAR OF TITLES . . . . .	171	NEWFOUNDLAND.	
CANADA.		60 Vict. c. 20 ( <i>St. John's Street Railway Act</i> , 1896), s. 42. SHEA v. REID-NEWFOUNDLAND CO. 178	
<i>Dominion.</i>		NEW ZEALAND.	
30 & 31 Vict. c. 3 ( <i>British North America Act</i> , 1867), ss. 35, 36. CROWN GRAIN CO. AND ATTORNEY- GENERAL FOR MANITOBA v. DAY AND ATTORNEY - GENERAL FOR CANADA . . . . .	172	Act 43 of 1894, s. 93. <i>In re WI MATUA</i> . . . . .	484
ss. 91, 92. TORONTO CORPORATION v. CANA- DIAN PACIFIC RY. CO. . . . .	172	C.—INDIAN STATUTES.	
s. 92. WOODRUFF v. ATTORNEY-GENERAL FOR ONTARIO . . . . .	175	1885, Act No. VIII. ( <i>Bengal Tenancy Act</i> , 1885), ss. 65, 188. RAJAH PRAMADA NATH ROY v. RAJAH RAMANI KANTA ROY . . . . .	180
<i>Interpretation Act</i> , 1886, s. 7 (2). TORONTO CORPORATION v. CANA- DIAN PACIFIC RY. CO. . . . .	172	1887, Act No. XV. ( <i>Indian Limitation Act</i> , 1887), Sched. II., arts. 91, 144. PETHERPERMAL v. MULIANDY SERVAI . . . . .	179



# ALPHABETICAL LIST OF ORDERS, RULES, &c., REFERRED TO IN CASES DIGESTED IN THIS VOLUME.

	COL.
<b>ADMIRALTY "SHORT CAUSE" RULES, 1908 :—</b>	
WATSON AND PARKER v. GREGORY . . . . .	8
<b>BANKRUPTCY RULES:—</b>	
Rules 62, 66, 71, 92. <i>In re</i> WEINBURG . . . . .	34
Rule 112. <i>Re</i> WEIGHELL; <i>Ex parte</i> TABER . . . . .	34
Rules 130—132. <i>Re</i> TAYLOR; <i>Ex parte</i> BOLTON . . . . .	38
Rule 136, Appendix, form 6. <i>Re</i> A DEBTOR; <i>Ex parte</i> BOLTON . . . . .	30
Rule 344. <i>In re</i> JONES . . . . .	34
<b>CLERGY DISCIPLINE RULES, 1892 :—</b>	
Rules 68, 69. <i>CHESNEY v. NEWSHOLME</i> . . . . .	197
<b>COMPANIES WINDING-UP RULES, 1903:—</b>	
Rule 36. <i>In re</i> VANGUARD MOTOR BUS CO., LD. . . . .	91
<b>COUNTY COURT RULES, 1903 :—</b>	
Order IX., rule 1; Order LXIII., rule 7. <i>FAWCETT v. HORSFIELD</i> . . . . .	123
Order XIV., rule 12. <i>WOOD v. WEBER</i> . . . . .	123
Order LIII., rules 1, 11. <i>CLINTON v. BENNETT</i> . . . . .	123
<b>CRIMINAL APPEAL RULES:—</b>	
Rule 9. <i>R. v. ELLIOTT</i> . . . . .	133
<b>CROWN OFFICE RULES, 1906 :—</b>	
Rule 25. <i>HORNER v. STEPNEY UNION ASSESSMENT COMMITTEE</i> . . . . .	372, 512
<b>DIVORCE RULES:—</b>	
Rule 97. <i>VIVIAN v. VIVIAN</i> . . . . .	291
<b>DOGS ORDER, 1906:—</b>	
Art. 1. <i>BURTON v. ATKINSON</i> . . . . .	14, 15
<b>HEAVY MOTOR CAR ORDER, 1904 :—</b>	
<i>WILMOTT v. SOUTHWELL</i> . . . . .	625
<b>MOTOR CAR (USE AND CONSTRUCTION) ORDER, 1904:—</b>	
Art. 11. <i>WILMOTT v. SOUTHWELL</i> . . . . .	625
<b>REGULATIONS FOR PREVENTING COLLISIONS AT SEA:—</b>	
Arts. 4, 11, 28. "THE BELLANOCH" . . . . .	593
Art. 8. "THE REGINALD" . . . . .	595
Art. 9. "THE COCKATRICE" . . . . .	595
Arts. 9, 20. "THE CRAIGELLACHIE" . . . . .	594
Art. 11. "THE TURQUOISE" . . . . .	591
Art. 15. "THE MATIANA" . . . . .	591
"THE JAMES JOICEY" AND "THE KOSTRENA" . . . . .	597
Arts. 15, 16. "THE ST. PAUL" . . . . .	597
Art. 16. "THE CHINKIANG" . . . . .	590
"THE ORAVIA" . . . . .	591
Arts. 19, 21, 27. "THE ETNA" . . . . .	593
Arts. 19, 21. "THE KONING WILLEM II." . . . .	598
Arts. 19, 21, 22, 25, 27. "THE KAISER WILHELM DER GROSSE" . . . . .	596
"THE ROANOKE" . . . . .	598
Art. 21. "THE KIRKWALL" . . . . .	592
Arts. 27, 28, 29. "THE ANSELM" . . . . .	592
Art. 28. "THE ARISTOCRAT" . . . . .	597
Art. 29. "THE CITY OF BERLIN" . . . . .	594



# ALPHABETICAL LIST OF ORDERS, RULES, ETC.

## RIVER THAMES BYE-LAWS:—

Art. 46. "THE GUILDHALL" . . . . .	COL. 594
------------------------------------	-------------

## RIVER TYNE BYE-LAWS:—

Art. 39. "THE NETTUNO" . . . . .	590
----------------------------------	-----

## RULES OF THE SUPREME COURT:—

### Order III. (Indorsements of Claim).

Rule 6. WORKMAN, CLARK & Co. v. LLOYD BRAZILIERO . . . . .	474
--	-----

### Order XI. (Service out of the Jurisdiction).

Rule 1 (e). CROZIER, STEPHENS & Co. v. AUERBACH . . . . .	473
---	-----

Rule 1 (f). ALEXANDER & Co., LD. v. VALENTINE AND SONS . . . . .	473
--	-----

Rule 1 (g). "THE HAGEN" . . . . .	6, 601
-----------------------------------	--------

### Order XII. (Appearance).

Rule 30. BONNELL v. PRESTON . . . . .	474
---------------------------------------	-----

### Order XIII. (Default of Appearance).

Rule 3. ARMITAGE v. PARSONS . . . . .	328
---------------------------------------	-----

### Order XIV. (Summary Judgment).

Rule 1. WORKMAN, CLARK & Co. v. LLOYD BRAZILIERO . . . . .	474
--	-----

Rule 4. LAZARUS v. SMITH . . . . .	428, 474
------------------------------------	----------

### Order XVI. (Parties).

Rule 4. GREENWOOD v. GREENWOOD . . . . .	476
--	-----

Rule 17. <i>In re</i> TOWNSEND'S SETTLEMENT; LORD TOWNSEND v. ROBINS . . . . .	364
--	-----

Rule 22. <i>Re</i> ATKINS; SMITH v. ATKINS . . . . .	476
--	-----

Rule 22. KYDD v. LIVERPOOL WATCH COMMITTEE . . . . .	487
--	-----

Rule 48. FURNESS, WITBY & Co., LD. v. PICKERING . . . . .	477
---	-----

### Order XXII. (Payment into and out of Court and Tender).

Rule 6 (c). "THE BLANCHE" . . . . .	7
-------------------------------------	---

### Order XXVI. (Discontinuance).

Rule 1. VICKERS, SONS AND MAXIM, LD. v. COVENTRY ORDNANCE WORKS, LD. . . . .	477
--	-----

### Order XXVIII. (Amendment).

Rule 11. ARMITAGE v. PARSONS . . . . .	328
--	-----

### Order XXXI. (Discovery and Inspection).

Rule 1. TANNENBAUM & Co. v. HEATH . . . . .	185, 306
---	----------

Rule 21. SEAL AND EDGELOW v. KINGSTON . . . . .	184
---	-----

### Order XXXIX. (Motion for New Trial).

Rules 1, 4. BAKER v. FABER . . . . .	487
--------------------------------------	-----

Rule 4. GREENE v. CROOME . . . . .	480
------------------------------------	-----

### Order XL. (Motion for Judgment).

Rules 6, 6a. BLAIR v. CLARK . . . . .	480
---------------------------------------	-----

### Order XLII. (Execution).

Rule 2. TALBOT v. BLUNDELL . . . . .	339
--------------------------------------	-----

Rule 24. WOODHAM-SMITH v. EDWARDS . . . . .	481
---	-----

Rule 31. MILBURN v. NEWTON COLLIERY Co., LD. . . . .	104, 491
--	----------

### Order XLVI. (Charging Orders, &c.).

ADAMS v. BANK OF ENGLAND . . . . .	481
------------------------------------	-----

### Order LIV. (Applications and Proceedings at Chambers).

Rule 21. BLAIR v. CLARK . . . . .	480
-----------------------------------	-----

### Order LIV. (a). (Construction of Written Instruments).

HUNT v. HUNT . . . . .	482, 530
------------------------	----------

### Order LVIII. (Appeals to the Court of Appeal).

Rule 1. <i>Re</i> TAYLOR: <i>Ex parte</i> BOLTON . . . . .	38
--	----

Rule 15. BAKER v. FABER . . . . .	487
-----------------------------------	-----

Rule 15. NORTON v. NORTON . . . . .	486
-------------------------------------	-----

### Order LXIV. (Time).

Rule 7. BAKER v. FABER . . . . .	487
----------------------------------	-----

### Order LXV. (Costs).

Rule 14 b. <i>Re</i> LACY; DYSON v. SPEIGHT . . . . .	223
---	-----

Rule 27 (9) (29). ATTORNEY-GENERAL v. BIRMINGHAM, ETC., DRAINAGE BOARD . . . . .	41, 488
--	---------

Rule 27 (29). CONSOLIDATED PNEUMATIC TOOL Co. v. INGERSOLL SERGEANT DRILL Co. . . . .	488
---	-----

## SHEEP-DIPPING (NORTH OF ENGLAND) ORDER, 1906:—

Art. 3. BINGLEY v. QUEST . . . . .	13, 14
------------------------------------	--------

## SOLICITORS' REMUNERATION: GENERAL ORDER:—

Sched. I, Pt. I, r. 8. <i>In re</i> SIMMONS' CONTRACT . . . . .	549, 615
---	----------

## STOCK EXCHANGE RULES:—

Rule 152. PONSOLLE v. WEBBER . . . . .	619
--	-----

# ALPHABETICAL LIST OF ORDERS, RULES, ETC.

<b>SUEZ CANAL RULES :—</b>	COL.
"THE CLAN CUMMING" . . . . .	595
<b>SUMMARY JURISDICTION RULES, 1886 :—</b>	
Rule 18. R. v. WOODCOCK . . . . .	373
<b>THE KING'S REGULATIONS (NAVY) :—</b>	
Art. 16. "THE CHINKIANG" . . . . .	590
Art. 615. "THE ETNA" . . . . .	593
<b>YORK-ANTWERP RULES :—</b>	
Rule 3. GREENSHIELDS, COWIE & CO. v. STEPHENS AND SONS. . . . .	314









311172

Author

Law.D1E

B9886

Title Butterworths' ten years' digest, yearly digest of reported cases for the year 1908; ed. by Hill & Clover.

**University of Toronto  
Library**

**DO NOT  
REMOVE  
THE  
CARD  
FROM  
THIS  
POCKET**

Acme Library Card Pocket  
LOWE-MARTIN CO. LIMITED



15/-